No. [redacted]

FILED
JUN 19 1957
JOHN T. FEY, Clerk

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

NO. 7293

TUNGSTEN MINING CORPORATION,
Plaintiff-Appellant

vs.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA,
Defendant-Appellee

On Appeal From a Judgment of the United States District Court for the Eastern District of North Carolina

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APPENDIX TO PLAINTIFF-APPELLANT'S BRIEF

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APPENDIX TO PLAINTIFF-APPELLANT'S BRIEF

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COMPLAINT

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

Civil No. 742

TUNGSTEN MINING CORPORATION, Plaintiff	
vs.	COMPLAINT
DISTRICT 50, UNITED MINE WORKERS OF AMERICA, Defendant	

The plaintiff, complaining of the defendant, alleges:

1. That the plaintiff is a corporation duly organized and existing with its principal office and place of business within the State of North Carolina, being located at Tungsten, North Carolina, in Vance County, within the eastern District of North Carolina, and is now and was on January 9, 1953, and has been continuously since that time operating a tungsten mine and processing plant in Vance County. That in the course and conduct of its business the plaintiff at the time referred to produced tungsten concentrate in large quantities, all of which was shipped to customers outside the State of North Carolina in interstate commerce, and affecting commerce within the meaning and provisions of the Labor-Management Relations Act as amended.

2. That the defendant, District 50, United Mine Workers of America, is an unincorporated association and is a labor organization within the meaning and provisions of the Labor-Management Relations Act as amended, and that on January 9, 1953, and at all times since said date, including the date of the commencement of this action, the defendant's duly authorized officers or agents were and are engaged in representing or acting for employee members of said District 50, United Mine Workers of America, within the Eastern District of North Carolina and the jurisdiction of this Court.

3. The jurisdiction of this proceeding is conferred upon this Court by the provisions of the Labor-Management Relations Act as amended.

4. That on or about April 3, 1946, pursuant to a petition duly filed with the National Labor Relations Board by the United Stone and Allied Products Workers of America, C. I. O., (hereinafter called Stone Workers), a labor organization within the meaning of Sections 2(5) and 8(b)(4)(C) of the Labor-Management Relations Act as Amended, for certification as the collective bargaining representative of the employees in a unit appropriate for collective bargaining purposes, and a consent election by secret ballot conducted by the Board at which Stone Workers received a majority of the ballots cast by eligible voters, and Stone Workers was duly certified as the exclusive representative of all the company's employees except managerial employees, office Clerical employees, technical employees, chemists, salesman, and all supervisory employees.

5. Since about May 15, 1946, the plaintiff and Stone Workers have entered into successive collective bargaining agreements covering rates of pay, wages, hours of employment, and other conditions of employment of the plaintiff's employees in the certified unit. The last such agreement was entered into on or about December 18, 1952, to replace the agreement which expired on January 15, 1953. The present agreement covers the

period from January 15, 1953, until January 15, 1955, and is currently in force and effect.

6. That on January 9, 1953, the defendant engaged in and by orders, directions, instructions, counsel, picketing, encouraging picketing, appeals, threats, intimidation, co-ercion, and other means, induced or encouraged the employees of the plaintiff and of other employers to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, the object thereof being to force or require the plaintiff to recognize or bargain with Tungsten Local Union, United Mine Workers of America, and/or the defendant, as representatives of employees in the unit set forth in the foregoing paragraph of this complaint, notwithstanding that Stone Workers had been certified as the exclusive bargaining representative of such employees under the provisions of Section 9 of the Labor-Management Relations Act, as amended.

7. That the defendant, by the acts and conduct hereinbefore set forth in this complaint, did thereby engage in an unlawful and unfair practice within the meaning and provisions of the Labor-Management Relations Act as amended.

8. That on January 9, 1953, the defendant, pursuant to the acts and conduct hereinbefore alleged, caused a strike of the employees of the plaintiff for the purposes and objects as hereinbefore set out, the said actions on the part of the defendant and the strike being unlawful under the terms of said Act, causing damage to the plaintiff as hereinbefore set out.

9. That said strike, attended with violence, continued until February 3, 1953, it being on that date restrained by an order of The Honorable Don Gilliam, United States Judge for the Eastern District of North Carolina.

10. That the National Labor Relations Board is an agency of the United States, and under the provisions of the Labor-Management Relations Act as amended has exclusive jurisdiction to hear and determine the facts relating to charges of unfair and unlawful labor practices. That the plaintiff filed charges against the defendant with the Regional Office of the National Labor Relations Board pursuant to which a complaint was issued, and hearing was held in which proceeding the plaintiff in this action and the defendant in this action were parties; That the National Labor Relations Board filed a decision in this action binding upon all parties thereto finding that the defendant was guilty of unfair labor practice, setting forth and finding the facts to be as heretofore alleged in this complaint, which decision was final, and the defendant is bound by the said decision and all findings and conclusions therein, and said decision is attached hereto and made a part of this paragraph and of this complaint by specific reference thereto, and said decision and its findings are res judicata and specifically pleaded in bar of any denial by the defendant of any of the allegations in this complaint set forth in all preceding paragraphs.

11. That by reason of the unlawful and wrongful acts of the defendant as alleged and as determined by the National Labor Relations Board, production in the plaintiff's mine was stopped and curtailed during and subsequent to the strike, causing the plaintiff to suffer damages for failure to produce and deliver tungsten to its customers and depletion of its stock pile in at least the sum of $200,000.00. In addition thereto, it was necessary for the plaintiff to employ additional guards to protect its property, to hire inexperienced labor and train them, and to incur other expenses, as set forth below:

(1) Hire of guards,

January	$4,223.68
February	3,358.92
March	2,356.48
April	1,441.28

	May	775.16	
	June	256.44	
	Total,		$12,420.96
(2)	Maintenance of Guard House all in January	$	425.60
(3)	Pistols and holsters purchased in January	$	668.40
(4)	Bus fares, transporting laborers to and from mine, January	$1,072.70	
	Taxi fares, transporting laborers to and from mine, January	90.00	
	Total,		1,162.70
(5)	Damage to employees' cars by strikers, January	$ 36.55	
	Damage to employees' cars by strikers, February	114.05	
	Total,		150.60
(6)	Personal injuries, February, to B. B. Bailey, Assistant Superintendent of plaintiff		47.70
(7)	Photography of strikers, picket line, picket headquarters, et cetera, January	$ 49.00	

	February	30.00	
	July	32.00	
	Total,		111.00
(8)	Spot radio announcements, January,		242.90
(9)	Newspaper advertisements in connection with strike, January,		$126.00
(10)	Maintaining employment office in Henderson,		
	February	$ 17.68	
	March	3.00	
	Total,		20.68
(11)	Payments to Utah Construction Company under contract for which work could not be performed		10,286.61
(12)	Additional office help in January made necessary by strike		339.48
	Additional office help in February made necessary by strike		369.74
(13)	Increase in payroll taxes and compensation insurance made necessary by guards, etc.,		
	January	$ 183.49	
	February	149.14	

	March	95.94	
	April	58.68	
	May	31.54	
	June	10.72	
	Total,		529.51
(14)	Miscellaneous expenses, January,		105.88
	Clerk Superior Court, Vance County, January,		24.00
			$ 27,031.76
			$200,000.00
	GRAND TOTAL,		$227,031.76

WHEREFORE, plaintiff prays judgment against the defendant for $227,031.76, and for such other and further relief as it may be entitled to have.

GHOLSON & GHOLSON
BY A. W. Gholson, Jr.
Henderson, North Carolina

READE, FULLER, NEWSOM & GRAHAM
BY F. L. Fuller, Jr.
Durham, North Carolina
Attorneys for the Plaintiff

NORTH CAROLINA

VANCE COUNTY

W. L. Long, being duly sworn, says that he is an officer, to-wit, Vice President, of Tungsten Mining Corporation, the plaintiff in the above entitled action; that he has read the foregoing complaint and it is true of his own knowledge, except the matters and things therein stated upon information and belief, and as to those he believes it to be true.

W. L. Long

Subscribed and sworn to before me,
this 27th day of November, 1953.

Eula S. Gulick
Notary Public

My Commission expires: Aug. 17, 1954.

(SEAL)

ANSWER

The defendant, answering the complaint of the plaintiff, says:

1. That as to the allegations contained in paragraph 1, the defendant admits that the plaintiff is a corporation duly organized and existing with its principal office and place of business within the State of North Carolina, being located at Tungsten, North Carolina, in Vance County, within the Eastern District of North Carolina, and is now and was on January 9, 1953, and has been continuously since that time operating a tungsten mine and processing plant in Vance County; and that in the course and conduct of its business the plaintiff at the time referred to produced tungsten concentrate which affected commerce within the meaning and provisions of the Labor-Management Relations Act as amended. That all other allegations contained in said paragraph 1, not herein admitted, are untrue and denied.

2. That paragraph 2 is admitted to be true.

3. That paragraph 3 is admitted to be true.

4. That paragraph 4 is untrue and denied.

5. That the allegations contained in paragraph 5 are untrue and denied, and further answering said paragraph, the defendant says and alleges that it had on December 18, 1952, and thereafter, by a voluntary act of said employees, more than a majority of the employees of the plaintiff corporation signed up and obligated as members of the defendant organization, and such employees were entitled to have the plaintiff corporation recognize this defendant as their bargaining representative, and such duty rested upon the plaintiff corporation, notwithstanding the plaintiff corporation attempted to bargain with an affiliate of the C.I.O. relative to rates of pay, wages, hours of employment and other conditions of employment, which the plaintiff corporation knew was contrary to the wishes of the vast majority of its employees.

6. That paragraph 6 is untrue and denied.

7. That paragraph 7 is untrue and denied.

8. That paragraph 8 is untrue and denied.

9. That paragraph 9 is untrue and denied; except it is not denied that an order was issued by the Honorable Don Gilliam, United States Judge for the Eastern District of North Carolina, on February 3, 1953.

10. That paragraph 10 was stricken on motion of the defendant by order of said United States Judge dated November 18, 1954.

11. That paragraph 11 and all its subdivisions are untrue and denied.

WHEREFORE, the defendant prays judgment:

(1) That the plaintiff corporation recover nothing of the defendant by this action and that the same be dismissed.

(2) That the defendant recover its costs.

(3) That the defendant have such other and further relief as to the Court may seem just and proper.

(4) That the defendant, by this demand, be granted a trial by jury.

Armistead J. Maupin
Armistead J. Maupin
930 Insurance Building
Raleigh, North Carolina

Charles P. Green
Charles P. Green
824 Insurance Building
Raleigh, North Carolina

Banks Arendell
Banks Arendell
824 Insurance Building
Raleigh, North Carolina
ATTORNEYS FOR THE DEFENDANT

DISTRICT OF COLUMBIA

CITY OF WASHINGTON

O. B. Allen, being duly sworn, deposes and says that he is an Official of District 50, United Mine Workers of America, to-wit, its Secretary-Treasurer, and as such has authority to verify this Answer; that he has read the foregoing Answer and that the same is true of his own knowledge except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

O. B. Allen

Subscribed and sworn to before me,
this 8 day of December, 1954.

Notarized

NOTARY PUBLIC

My Commission Expires: _____

OPINION AND JUDGMENT OF DISTRICT COURT

I heard the evidence in this civil action without a jury. The plaintiff's prayer for judgment grew out of a strike of the employees of the plaintiff at its tungsten mine and processing mill located in Vance County, North Carolina. What follows is a chronological summary of the pertinent events, as I find them from the evidence.

Tungsten Mining Corporation, referred to as "Tungsten", and United Stone & Allied Products Workers of America, C.I.O., referred to as "Stone Workers", after an election, entered into a collective bargaining agreement on April 3, 1946. Stone Workers was certified by the National Labor Relations Board as the Collective Bargaining Representative of the employees of Tungsten. Contracts between Tungsten and Stone Workers were always in force from May 15, 1946, until January 15, 1953. Tungsten and Stone Workers changed the anniversary date to January during the interim to have it approximately coincide with the calendar year for their mutual convenience.

William Holleman and many of his fellow workers had become dissatisfied with the representation afforded them by Stone Workers. In October, 1952, Holleman contacted Frank Lumpkin, a relative, of Hopewell, Virginia, employed at the Hercules Powder Company; and the two discussed the process of changing unions. The union at Hercules Powder Company was District 50, United Mine Workers of America, the defendant before me, referred to as "District 50". Shortly after Holleman made this inquiry, W. A. Shuey, an officer of the Hercules Local, visited Tungsten, talked with Holleman, and supplied application cards for membership in District 50.

An organizing campaign launched by Holleman proved to be a success. In short order, 386 of Tungsten's approximately 400 employees signed up with District 50. Of these 386, 269 who had been members of Stone Workers also signed forms to sever relations with that union and cancel their dues check-off authorization held by the Company.

About the middle of October, 1952, Robert Fohl, Regional Director for the United Mine Workers; Lucian Wood, Field Representative for District 50; and Shuey came to Tungsten and conferred with James R. Sweet, Vice President and General Manager of Tungsten. The District 50 representatives informed Sweet of their union's majority status at Tungsten. They explained to him that union's avoidance of the National Labor Relations Board's facilities and offered to have District 50's status verified through the medium of some other disinterested third party. Local ministers and the North Carolina Department of Labor were suggested. There was, of course, no offer or request for the membership lists to be handed over directly to Tungsten.

A few days later, J. B. Foreman, a national representative of Stone Workers, arrived on the scene. He came in the capacity of Administrator of the Tungsten Local, having been appointed by Sam Scott, President of Stone Workers International, under a clause in the Stone Workers' constitution that provides for such an appointment in the event that a crisis is found to exist in a local. Foreman quickly lost any doubts he may have held as to the existence of a crisis. At a meeting of the majority of Tungsten's employees he was shouted down without a chance to make himself heard. Inquiry among the workers convinced him that virtually all had joined District 50, and he so informed the Company.

On November 13, 1952, George Pendley, Secretary of Stone Workers Local, sent to Tungsten a letter advising that the contract with Stone Workers, due to expire January 15, 1953, should not be renewed. Copies were sent to Stone Workers and the National Labor Relations Board.

W. L. Long, Vice President and General Counsel of Tungsten, and Sweet were uncertain what course Tungsten should follow in the situation that confronted them. In particular, they were puzzled by Foreman's claimed power to act for the Stone Workers. Long and Sweet attended a company meeting in New York in December. It was arranged for them to confer while

there with an attorney for the Stone Workers from Boston. Foreman and Scott were also present at this conference.

Long and sweet were readily convinced of Foreman's capacity to act for the Stone Workers Local in negotiating with Tungsten. Whether or not substantial agreement was reached there about a new contract is not at all clear from the evidence. Each of those present who testified before me had his own version of what was said and done in that New York hotel room more than three years before the trial. Regardless of where the negotiations were had, Tungsten and Stone Workers did enter into a new contract a few days later.

Through December and the early days of January, 1953, District 50 meetings and organization continued. Tungsten made no effort whatsoever to accurately evaluate the obvious situation of which it had full and ample notice. Before and during the strike Tungsten steadfastly refused to even consider that the Stone Workers Local was a defunct organization. Instead, by the testimony of its officers, Tungsten placed its reliance on three principal factors: (1) Advice from the N.L.R.B., which was completely out of touch with the situation; (2) Between 250 and 270 dues checkoff authorizations that it still held; (3) Stone Workers' N.L.R.B. Certification, which was more than six and one-half years old. Long, as General Counsel of Tungsten, was (and still is) of the opinion that Tungsten should refuse to bargain with any union not certified by the N.L.R.B.

On January 9, 1953, the storm broke. Holleman, who was then President of the unrecognized District 50 Local, was working in the mine with James Knight, Secretary of the new organization. The two were doing carpentry work in an overhand stope. About 11:30 A.M., it became necessary for them to descend to the tunnel beneath to cut a piece of lumber for their work in the stope. This done, they proceeded to eat their lunch before the regulation noon lunch hour. The assistant mine foreman and the shaft boss arrived. Holleman and Knight were fired on the spot.

They left the premises and began to meet employees on the next shift, and word of their discharge spread. By early evening a fullfledged strike was in progress. The days that followed were characterized by large scale confusion about the gates to the mine and the surrounding countryside. The confusion was attended by violence and rowdyism. On January 14, an order from the North Carolina Superior Court limited the number of pickets about the gate to six and forbade others from approaching within a hundred feet. A defendant named in that court order was District 50.

Fohl and Wood were about the scene of the strike frequently before the restraining order was issued which named their organization as a defendant. When these District 50 representatives learned that Holleman and Knight had been fired, they advised the two to present their grievance to Tungsten under the Stone Workers' contractual procedure. Holleman and Knight declined to do so, insisting that such a move would be futile. Wood was present on the night of the fourteenth when the restraining order was served. He assisted a Highway Patrolman in stepping off the one hundred feet specified in the order.

On January 15, 1953, Tungsten's old contract with Stone Workers expired and District 50 formally adopted the six day old strike for the purpose of getting recognition. Strike headquarters was established at a rented building some distance from the mine. The union furnished picket signs demanding recognition. At all times, before and after the fifteenth, District 50 representatives cautioned strikers against violence. A federal injunction was issued by this Court on February 3, 1953, at which time the strike ended and representatives of District 50 sent copies of the injunction to all on strike, posted notices of it, and left the scene for good.

Tungsten's action against District 50 is founded on Title 29, U.S.C.A. Sec. 187. The pertinent sections of that statute read as follows: "(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting com-

merce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service, where an object thereof is —(3) *forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of Section 159 of this title;* (b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of Section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

The language above is found also in Section 158 (b) (4) (C). In this section the action defined in the repeated language is proscribed as an unfair labor practice for which an injunction is the appropriate remedy. Interpretations of this key language in the context of Section 158 are persuasive for determining the meaning in the context of Section 187. Such an interpretation was recently made in *Ralph E. Kennedy, Regional Director of the Fourteenth Region of the National Labor Relations Board v. Warehouse & Distribution Workers Union, Local 688*, 29 C.C.H. Labor Cases 69736 (D.C. Mo., 1956). The facts of this case are readily seen to present a striking parallel to those of the case at bar.

Following an election by secret ballot, Coca-Cola Bottling Company Salesmen Association (herein called Association) was duly certified as the exclusive bargaining representative of the employees of Coca-Cola Bottling Company of St. Louis, Missouri, (herein called Coca-Cola). A collective bargaining agreement was entered into between Association and Coca-

Cola on July 17, 1953, providing for its expiration on November 1, 1955. Negotiations for a new contract were commenced in June, 1953, but none was agreed upon.

On September 2, 1955, respondent Warehouse & Distribution Workers Union, Local 688 (A.F.L.), (herein called Local 688), filed with National Labor Relations Board a petition for election of collective bargaining representative of the employees of Coca-Cola. Hearings on the petition were held. This procedure for recognition was closed to the defendant before me, District 50, because of its well known refusal to bare its affairs to public scrutiny. However, in *United Mine Workers of America v. Arkansas Oak Flooring Company*, decided April 23, 1956, 351 U. S. 62, the United States Supreme Court made it clear that the National Labor-Management Relations Act "does not make it a condition that the representative . . . shall be certified by the Board, or even be eligible for such certification." District 50 U.M.W.A. v. N.L.R.B., 4th Circuit, decided June 5, 1956

About October 25, 1955, while a decision on the petition was pending, Local 688 made demands on Coca-Cola for immediate recognition as the collective bergaining representative of the employees in the certified unit (Association) and that Coca-Cola negotiate a new agreement with Local 688, the latter union threatening to strike and picket Coca-Cola's premises to enforce its demands. Coca-Cola rejected such demands. All this occurred in the face of the certification of Association and before decertification.

Local 688 called the threatened strike on November 9, 1953, and the strike and picketing continued thereafter.

Association continued to function after October 24, 1955; Coca-Cola continued to deduct Association's membership dues from employees' wages and Association continued to accept the payments of such dues checked off; and Coca-Cola was at all times in possession of authorizations for check off of Association dues which had not been formally revoked in writ-

ing from about 173 of Coca-Cola's approximately 196 employees.

Judge Moore found two other important facts as follows:

"(a) Whatever may have been the membership of the employees, by October 24, 1955, the Association had clearly lost the support of a majority of the employees in the unit, and a majority had voluntarily designated Respondent as the agent, they desired to be their collective bargaining representative. Respondent retained the voluntary allegiance of a majority of the employees in the unit until the trial in this case.

"(b) Before the time of the strike the Company, while it may not have been convinced that Respondent represented a majority of employees in the unit, had good cause to doubt, and did doubt, that the Association retained the support of a majority."

Upon the foregoing facts Judge Moore rendered his decision, based on these conclusions among others:

"Since the relief sought by petitioner is being denied on other grounds, it is not necessary to consider whether the Association's status, or its representation of the employees in the unit, had deteriorated to such an extent that the Association's certification should for this reason be regarded as totally ineffective.

"Because the Association had, by November 9, 1955, when the Association's certification was more than one year old, lost the support of a majority of the employees in the bargaining unit, and the Company had at least a bona fide doubt that the Association retained the support of a majority, the Company was then no longer required by law to bargain collectively with the Association, but was free to " 'refuse to bargain further with it.' " *Brooks v. National Labor Relations Board*, 348 U. S. 96, 104 — — — An object of Respondent's conduct, therefore, was to require the Company to violate its duty of

neutrality between the Association and Respondent — — — — not to require the Company to violate its duty to bargain with the certified union.

"Section 8 (b) (4) (C) of the act proscribes strikes "having as their purpose forcing any employer to disregard his obligation to recognize and bargain with a certified union and in lieu thereof to bargain with or recognize another union". — — — — That section does not, as the Board contends, proscribe strikes directed toward compelling the employer to violate his duty of neutrality between two competing unions, nor does it proscribe strikes to gain an object (recognition) which could alternatively be gained, eventually, by means of the peaceful processes of the Board's election procedures, for it is not written in those terms, and there is no rational relation between these circumstances and the criterion established by the Act: whether 'another labor organization has been certified as the representative of (the) employees under the provisions of Section 9.' A strike is not rendered unlawful by the presence of such circumstances. — — — — Accordingly Section 8 (b) (4) (C) does not proscribe the conduct of Respondent in this case.

"The petition for an injunction should therefore be denied."

To my mind Judge Moore's opinion from which I have quoted at length is sound and, if followed, completely determinative of the case now before me.

The cases hold that while two unions are vying for recognition the employer is obligated by law to remain neutral, but, as pointed out in *District 50 U.M.W.A. v. N.L.R.B.* above cited, this does not "require that the employer refuse to recognize a bargaining agent chosen by a majority of his employees if such majority is so clearly established that there can be no true question with regard thereto." And also under the cases this right of the employer exists as a general rule where there has been a certification by the Board following an election,

provided that one year has elapsed since the certification. Here, about six years had passed since the certification and I am of the opinion that Tungsten was at liberty to recognize District 50 upon clear proof that a majority of the employees was in January, 1953, committed to that union and had repudiated Stone Workers. This unquestionably was the situation and Tungsten was on notice. Tungsten really makes no attack on the large "sign up" which had been obtained by District 50 and there is no vestige of proof or even a suggestion that the signatures on the cards were not authentic. The record indicates that Tungsten had no hand in switching employees from Stone Workers to District 50. So that, it is my view that Tungsten was free to recognize District 50 in spite of the Board's certification of Stone Workers, but Tungsten preferred a contrary course, taking the position that it would recognize only a union certified by the N.L.R.B. Such position was without justification in law, as above pointed out.

Fairly considered, it seems to me, the action of defendant in adopting the strike, after the termination of the contract between Tungsten and Stone Workers, when in fact Stone Workers was no longer the choice of the employees as bargaining agent, should not be held to be in violation of the statute. No other avenue of relief was open to the defendant and the majority of the employees which it represented. Recourse to the Board was not available, but, as held in *U.M.W.A. v. Arkansas Oak Flooring Co.*, above, and other cases, defendant was not precluded from representing employees as bargaining representative. It should not be held on the facts here that defendant's object was to force Tungsten to disregard its obligation to Stone Workers. The object was rather to lead Tungsten away from the generally prevailing obligation of neutrality where a real contest betwen two unions is on, to cause it to act in the light of realities, to get Tungsten to realize and accept the fact that it was at that time under no obligation to Stone Workers, which was no longer the bargaining agent "designated or selected for the purpose of collective bargaining by the majority of the employees."

I am adjudging that District 50 is not liable to Tungsten because Stone Workers, despite its certification, was no longer a going concern, nor did it represent the overwhelming majority of Tungsten's employees—a situation of which Tungsten had every reason to be well aware. In view of this holding, it is unnecessary to discuss or decide the question of agency under Title 29, U.S.C.A., Section 185, or the question of liability for wildcat strikes that are adopted by a defendant union.

In accord with the foregoing opinion, it is hereby ordered, adjudged, and decreed that the plaintiff Tungsten Mining Corporation recover nothing of the defendant District 50, United Mine Workers of America by this action. It is further ordered that the defendant recover of the plaintiff the defendant's costs incurred in the defence of this action.

s/ Don Gilliam

UNITED STATES DISTRICT JUDGE

TESTIMONY

(Page 2)

SAM H. SCOTT, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GHOLSON:

Q. What is your name?

A. Sam H. Scott.

Q. What position do you hold?

A. International President United Stone and Allied Products Workers of America.

Q. Where do you live?

A. Winston-Salem, North Carolina.

Q. State whether in March, 1946 you occupied the same position with United Stone and Allied Products Workers of America.

A. In March, 1946 I was International Representative. I was not an officer at that time.

Q. When did you become president?

A. September, 1946.

Q. State whether or not pursuant to your position with United Stone and Allied Products Workers of America you contacted and entered in negotiations with Tungsten Mining Corporation?

A. I did.

Q. When was that?

A. It was after the election and certification in 1946, as I recall. I don't have the record with me. Our first contract

was dated sometime in May, 1946. It may have been earlier but I (P. 3) believe that was the date.

THE COURT: What date is it as alleged in the complaint?

MR. GHOLSON: May 15, 1946.

Q. I hand you this and ask you what that is?

A. This is the contract between the United Stone and Allied Products Workers of America Branch 98 and Tungsten Mining Corporation.

THE COURT: We will agree that we can say "Stone Workers". This is a contract signed between the committee and myself and management of the company.

Q. What is the expiration date of that contract?

A. The anniversary date I don't recall but I will see from the document. May 15.

MR. GHOLSON: I want to prove that during the entire period from 1946 until the date of this contract there has been continuous renewal of contracts between Stone Workers and Tungsten Mining Corporation.

MR. GREEN: No, sir, we will not agree to that. We don't think it is competent. They will have to rely upon the contract which was in existence.

OBJECTION BY DEFENDANT TO ALL EVIDENCE IN RESPECT TO ANY CONTRACT EXCEPT THE CONTRACT CURRENT AT THE TIME OF THE STRIKE.

Q. State whether or not this is the contract entered into May, 15, 1946?

A. This is the contract that was entered into, or a copy of it.

(P. 4)

Plaintiff introduces in evidence the contract entered into May 15, 1946 and same is marked "P-3".

THE COURT: In each instance when an objection is overruled and contract is admitted the defendant moves to strike it from the record. The motion in each instance is denied.

Q. What is this, Mr. Scott?

A. Contract dated May 15, 1947. This is the second contract year between the parties.

Q. Did that become effective at the termination of the 1946 contract?

A. It did.

Plaintiff introduces in evidence the contract entered into May 15, 1947, and same is marked "P-4".

OBJECTION BY DEFENDANT. OVERRULED.

Q. What is this?

A. Contract dated May 15, 1948. All of the three contracts signed by the committee of the company and the Local Union.

Q. I ask you the duration of that agreement?

A. Two years and for year to year thereafter unless terminated by either party sixty days prior to the anniversary date.

THE COURT: Before that they were annual contracts?

A. Yes, sir.

The plaintiff introduces in evidence the contract dated May 15, 1948, and same is marked "P-5".

OBJECTION BY DEFENDANT OVERRULED.

(P. 5)

Q. I hand you this and ask you what this is?

A. Contract dated May 15, 1950 between Tungsten Mining Corporation and Stone Workers, Branch 98.

Q. When was that made?

A. May 15, 1950.

Q. What is the expiration?

A. For a period of approximately eighteen months. To run until January 15, 1952, which is the anniversary date.

Q. Was there any notice served to terminate it?

A. I don't recall. I suppose the records will show. From time to time notice was served to modify and whether this was—

OBJECTION BY DEFENDANT.

Q. Mr. Scott, I ask you what is that paper you have?

A. This is a stipulation to extend the 1950-'52 contract for another year with certain changes in rates of pay and the anniversary date.

Q. Read that provision.

OBJECTION BY DEFENDANT OVERRULED.

A. "Section 27 be amended in the third line thereof so as to change 1952 to 1953".

Plaintiff introduces in evidence contract dated May 15, 1950, marked "P-6".

Plaintiff introduces in evidence stipulation extending the term of the May 15, 1950 contract to January 15, 1953, and same is marked "P-6a".

(P. 6)

OBJECTION BY DEFENDANT TO THE INTRODUCTION OF EXHIBITS "P-6" and "P-6a". THE OBJECTION IS OVERRULED.

Q. What is this paper?

A. Agreement between Tungsten Mining Corporation and Stone Workers Local 98 and Stone Workers International Union dated January 15, 1953.

Q. When was that contract agreed upon?

A. This contract agreed upon just prior to January 15, 1953. I don't have the date at my fingertips.

Q. This contract went into effect on January 15, 1953 immediately on termination of the previous contract, plaintiff's Exhibit 6?

A. It was negotiated prior to January 15 to become effective January 15.

Q. I ask you if it was negotiated in December, 1952?

A. It could have been. It was in the sixty day period prior to January 15, 1953.

Q. I ask you to look at the agreement and refresh your recollection.

A. It was made and entered into 18 day of December, 1952 by and between Tungsten Mining Corporation and United Stone Workers, Local 98, hereinafter designated as the Union. That was within the sixty day period prior to January 15, 1953.

MOTION BY DEFENDANT TO STRIKE THE ANSWER. MOTION DENIED.

Plaintiff introduces in evidence agreement between Tungsten Mining Corporation and Stone Workers, dated (P. 7) December 18, 1952, becoming effective January 15, 1953, and same is marked "P-7".

OBJECTION BY DEFENDANT OVERRULED.

Q. Who was this contract signed by?

A. J. B. Foreman, Administrator for International and Local Union, and W. L. Long, Vice President and General Counsel, J. R. Sweet, Vice President and General Manager. B. B. Bailey, Assistant to the General Manager, representing the Tungsten Mining Corporation.

Q. Who was J. B. Foreman?

A. Appointed as Administrator of the affairs of the Local Union prior to the negotiations.

Q. Appointed by you?

A. By the executive board.

Q. Did he have authority to enter into these negotiations and conclude that contract on the part of the Union?

A. Yes, sir.

Q. Has there been any period of time from May 15, 1946 until the present time that there has been any lapse in the contract agreements between the Tungsten Mining Corporation and your Union?

OBJECTION BY DEFENDANT OVERRULED.

A. No, sir.

(P. 8)

CROSS EXAMINATION OF MR. SAM H. SCOTT
BY MR. MAUPIN

Q. You testified a purported contract was entered into sometime in 1952?

A. Yes.

Q. You testified in May, 1946 you first came into this company?

A. Yes.

Q. You organized a union?

A. Yes, sir.

Q. How many members you have?

A. I don't recall but the certificate shows a majority.

Q. Shows 117 voted?

A. I don't recall the number.

Q. And at that time you organized them and called an election through the Labor Relations Board?

A. That's right.

Q. And won the election?

A. Yes, sir.

Q. Another union competing with you.

(P. 9)

A. An independent union. Group of workers of Tungsten Mining Corporation at that time.

Q. You won over them?

A. Yes, sir.

Q. You began to negotiate a contract with the officers of Tungsten?

A. Yes, sir.

Q. You did negotiate a contract?

A. Yes.

Q. That contract entered into May 15, 1946?

A. Effective May 15, 1946.

(Page 14)

Q. What bargaining did Stone Workers do with Mr. Long and Mr. Sweet or anybody connected with Tungsten Mining Corporation in December, 1952?

OBJECTION BY PLAINTIFF.

Q. This 1953 contract which was entered into in December, 1952, under what circumstances was that entered into?

OBJECTION BY PLAINTIFF OVERRULED.

A. There were conferences held between Mr. Sweet, Mr. Long, myself and Mr. Foreman and president of the local

union, Frank Swan, and I am not sure but two or three others on the committee that worked out terms and wages on this contract same as they have always been worked out. If you will look at the wage scale from time to time, how they progressed from year to year, from contract to contract, you will find there have been negotiations every time a contract has been made and many hours and days ran into weeks, sometime strike votes taken and strike actions pending.

Q. You say you had several meetings with Mr. Long and Mr. Sweet and others?

A. Yes, sir.

Q. Where?

A. There were meetings in Mr. Long's and Mr. Sweet's office at the Tungsten mine.

(P. 15)

Q. Where else?

A. One meeting between our attorney and Mr. Long and Mr. Sweet and myself in New York to determine the procedure the company could follow in the administration of our organization. Our attorney is from Boston. Mr. Long was in New York on business for his firm and we requested a conference with Mr. Long, our attorney did, and he agreed to meet us at a stipulated place in New York in order that our attorney might go over the matter with him, and Mr. Long's purpose in requesting our attorney to be present to determine whether or not he had the right to bargain with the administrator of the local union. That is what transpired there. Negotiations of the contract was brought to the Tungsten mine.

(Page 23)

Q. You later learned that a majority of the workers there passed a resolution and as a result of the resolution you received a letter from Mr. George Pendley the next day?

A. No, I didn't receive any letter from Mr. Pendley after that day.

Q. Received copy of a letter?

A. No.

THE COURT: Who was Mr. Pendley?

A. He was an employee of the Tungsten mine.

BY MR. MAUPIN:

Q. He was the secretary and treasurer of your defunct union in the Tungsten mine?

OBJECTION BY PLAINTIFF

THE COURT: You are including in your question a conclusion as counsel who is very much interested in the case.

MR. MAUPIN: Pendley was his own secretary and treasurer.

THE WITNESS: That is an unqualified untruth. Mr. Pendley was never secretary and treasurer.

Q. He was recording secretary?

A. He may have been. As I remember now the corresponding secretary's office became open and I don't know that there was a corresponding secretary.

RE-DIRECT EXAMINATION OF MR. SAM H. SCOTT:

Q. As I understand it the purpose of the trip to New York was (P. 24) Mr. Long wanted to determine the authority of Mr. Foreman so he would know who to deal with in dealing with your union?

A. Yes, sir.

Q. The negotiations of the contract in regard to the wage and hour and so forth were conducted in the office of Tungsten mine?

A. Yes, sir.

Q. I ask you when these negotiations went on between Mr. Long and Mr. Sweet for the Company, you and Mr. Foreman for International, and Mr. Swan, Charles Pittman and Clem Martin for the local union.

A. Mr. Swan and Pittman and one other, a colored boy. It could have been Martin.

Q. Did they consult with you on the terms and conditions of the new contract?

A. They did.

Q. It has been brought out that the strike occurred January 9, 1953. I ask you if your union called or condoned that strike?

A. No, sir.

RE-CROSS EXAMINATION OF MR. SCOTT:

Q. Did Mr. Swan, Mr. Pittman and Mr. Martin go to New York with you?

A. No, sir.

Q. They met you in the office?

A. Yes.

Q. You presented them a packaged plan that had been determined (P. 25) in New York?

A. No, sir.

RE-DIRECT EXAMINATION OF MR. SCOTT:

Q. You are still recognized as bargaining agent of Tungsten mine today?

A. Our union is, yes, sir.

Q. And has been since 1946?

A. That's right.

THE COURT: The contract in force on the date of strike was later superseded?

A. Yes, sir, by the one negotiated by the administrator which was six days after the strike.

Q. There is still a contract between Stone Workers and the mine?

A. Yes, sir. Biggest organization we have ever had.

Q. Is that the one that was negotiated by the administrator?

A. No, sir. That was terminated as of the 15 of this past January and now there is a two year contract in effect effective from January, 1956 until January, 1958.

W. L. LONG, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FULLER:

(Page 31)

Q. Do you know Mr. Fohl, or did you meet him?

A. I didn't until this trial. In January I met him and I see him here today.

Q. You didn't have any meetings or contact with him prior to that?

A. No, sir.

Q. You recall Mr. Fohl at the hearing in January, 1953?

A. Yes, sir.

Q. I believe he took part in that hearing?

(P. 32)

A. Yes, sir.

Q. Do you recall in what capacity he appeared?

A. He said he was Regional Director of District 50 as I recall.

Q. Did you know Mr. Holloman?

A. Yes.

Q. Tell the Court what you know about him.

OBJECTION BY DEFENDANT OVERRULED.

A. Mr. Holloman worked in our office in the engineering department. I had known him sometime prior to the strike.

Q. Is he here?

A. Yes, sir.

Q. Did he participate in the hearing in January, 1953?

A. Yes, he was a witness.

Q. In what capacity did he testify?

OBJECTION BY DEFENDANT OVERRULED.

Q. Mr. Holloman testified that he was the Local President of the Local United Mine Workers, District 50.

Q. Did you know Mr. Lucian L. Wood in the hearing?

OBJECTION BY DEFENDANT TO ANYTHING PERTAINING TO THE HEARING IN 1953. THE OBJECTION IS OVERRULED.

A. Yes, I saw him. He was a witness.

Q. In what capacity?

A. He was district representative United Mine Workers.

Q. When did the strike actually commence?

A. About six o'clock, January 9, 1953, in the afternoon.

Q. Tell what happened.

A. I was not at the mine at the time. I had been to Winston-Salem. I was notified about the strike when I got back to Raleigh with Mr. Sweet. He and I left at once and went to the mine. I imagine I got there about nine o'clock that night, or some such matter. There was a commotion at the gates, a great many people there. I stayed there until twelve or one o'clock that night and went back home. I was back there every day from then until the strike ended. That first four or five days there was a great deal of disorder, a great deal of crowding in the public roads and trouble and riotous attitude on the part of the people assembled at the gates. I saw a lot of people there I had never seen before, didn't recognize their faces as having been in our employ. Don't know where they came from. The situation was so bad we applied to the state court for protection and Judge Clawson Williams issued injunction.

Q. Mr. Long, I believe when we recessed for lunch you were testifying about actual violence or disorder on the picket line during the strike and had testified that people were milling about and you had difficulty in getting in the gates. Do you recall any specific acts of violence involving certain people?

OBJECTION BY DEFENDANT OVERRULED.

Q. Do you mean that I saw?

(P. 34)

Q. Yes.

A. It would be violence to myself. I was going out to the mine the day after the strike, on the 10th, back from Henderson, and had Mr. Sweet with me and numbers of people were along the side of the road and cars parked on one side of the road. I stopped there and a man I didn't know standing

side of the road with a group of other people. I said, "I wish you wouldn't park your car in the road on the concrete." He said, "You can get by. Go on up the hill." I said, "I would like for the roads to be kept open." He invited me to get out of the car and bring Mr. Sweet with me. He said, "Get out and bring that young man with you and I will show you what I will do about it." I told him I thought they ought to leave the roads clear and I drove on up the hill. I didn't get out of the car.

THE COURT: Your property on both sides of the road?

A. Yes, sir. Hard surface road.

BY MR. FULLER:

Q. You know of any other instance when they blocked the highway that you saw yourself?

A. No.

Q. Did you at any time during the period of the strike see picket lines in and about your premises?

A. Yes, saw them continuously.

Q. At which gate?

A. Both gates.

(P. 35)

Q. So far as you know were they maintained regularly day and night?

A. I think they were.

THE COURT: Gates entering your property?

A. Yes, sir.

Q. Where the work is done?

A. Yes, sir.

Q. Property on both sides of the road?

A. Yes, sir. Turn one side to go in the gate where the mill and shaft is, the other side of the road no fence

but woods. Two gates. One at the feed shaft and the other gate at the main shaft.

BY MR. FULLER:

Q. On account of the strike what was your company compelled to do to help protect your property and maintain order?

OBJECTION BY DEFENDANT.

Q. What did your company do?

OBJECTION BY DEFENDANT OVERRULED.

A. We asked the Sheriff of Vance County to give us protection and to appoint additional deputies. We went to the Superior Court and asked the court to grant injunction to restrain the violence and give some semblance of order. We called on the Governor and asked to get state highway patrol to see that the highway was kept open. We employed a number of guards and they were deputized by the Sheriff to protect people going and coming through our gates.

(P. 36)

THE COURT: Did you cease operating?

A. We never ceased to operate fully. We didn't do any mining. We ran the pumps, kept the mine pumped out but no ore came from underground for a period of a week. We ran the mill as best we could with overseers and men who came through the gates but we lost on the whole about ten days' production.

Q. During the strike did you see any statements or reportings through public newspaper not issued by the management?

A. Yes, sir.

Q. You didn't see the statement that appeared in the Henderson paper before it was published?

A. No.

Q. Do you know who purported to sign it as reported in the paper?

A. Mr. Holloman.

Q. Did he designate who he was?

A. He signed it as president of Local District 50 Mine Workers.

OBJECTION BY DEFENDANT OVERRULED.

THE COURT: Later on if it is not brought home to the defendant I will strike it all out and the case will fall.

BY MR. FULLER:

Q. In addition to reports in local and state newspapers was there any other particular act or dissemination about the strike (P. 37) and its purpose?

OBJECTION BY DEFENDANT OVERRULED.

A. There were signs and broadcasts.

Q. Did you hear them?

A. I don't recall.

Q. Now, Mr. Long, I believe during the strike you testified that certain signs were shown and exhibited. Did you see any of those signs?

A. Yes, sir, I saw them on numerous occasions.

Q. Where did you see them?

A. In the hands of the pickets and on the cars and near our gates, and at strike headquarters near Townsville.

Q. Recognize any of the strikers carrying signs?

A. No, I don't know that I did.

Q. Recognize them as employees of your company?

A. No.

Q. Look at this picture and look at the sign and see if that is similar to signs you saw carried by strikers?

A. Yes, sir.

Q. What does it say?

A. "On strike. Company unfair to workers District 50. District 50 UMWA".

Q. That is a picture of one of your shafts.

OBJECTION BY DEFENDANT TO ALL PICTURES UNLESS HE CAN IDENTIFY THEM. THE OBJECTION IS OVERRULED.

(P. 38)

THE COURT: What do you know about the taking of this picture?

A. I asked Mr. Sweet to have the photographer in Henderson to go and take the pictures.

Q. You know these men standing at the car?

A. I don't know them but know their faces as people who have worked with us. I couldn't identify individuals.

Q. You don't know whether they were on strike or not?

A. Personally I don't know but they are wearing strike signs and standing in front of the gate. I would say they were on strike.

Q. Where is the gate on this picture?

A. It would be off to the right. The injunction required them to move back from the gate. At first they would crowd right up to the gate. Judge Williams' in-

junction moved them off and limited them to six in number.

BY MR. FULLER:

Q. This shows five men, three bearing signs?

A. Yes, sir.

Q. What does this sign on the left say?

A. "On strike for recognition, better wages and conditions of employment. District 50 United Mine Workers of America".

Q. The one next to it?

A. Practically the same thing.

Q. The other says "On strike"?

A. Yes, sir.

(P. 39)

Q. On this does that sign show practically the same thing?

A. Yes.

Q. What does this show?

A. "On strike. Company unfair to workers. District 60 UMWA".

OBJECTION BY DEFENDANT UNTIL IT IS PROPERLY IDENTIFIED AS BEING TAKEN AND BY WHOM AND WHEN: THE OBJECTION IS OVERRULED.

Q. What does this show?

A. Group of men standing in front of a store, which store is just outside of Townsville.

Q. Where is Townsville in reference to the mine?

A. About three miles from the mine. Standing under sign which says, "District 50 UMWA Headquarters". I saw that sign every time I was there.

Q. You have no knowledge as to who rented that store?

A. No, sir.

THE COURT: How many employees quit work?

A. We had 402 when the strike occurred. When order was restored 156 returned. How many were on strike or how many were scared to come I don't know. In my opinion a great many were afraid to come like this 156. I know that hundreds have told me since then that they were afraid—

MOTION BY DEFENDANT TO STRIKE. THE MOTION IS ALLOWED.

BY MR. FULLER:

Q. There were some questions this morning of the witness who preceded you about checkoffs. How many people had signed assignment (P. 40) of wages, gravel or stone workers? Do you recollect about the number of those authorizations you had just preceding and during the strike?

A. Yes.

Q. How many?

A. My recollection 258 checkoffs, written statements signed by employees of ours that they were members of the Stone Workers Union.

Q. Had they signed voluntary dues assignment?

A. Yes.

Q. What was the condition at the time of the strike and during the strike?

A. Written statement.

Q. When did it first come to your attention that another union had come down and claimed to be the proper bargaining unit?

A. Sometime in October is my recollection.

Q. October, 1952?

A. Yes, sir.

Q. Tell the Court how you found out about it and what was said to you?

A. Mr. Sweet told me he had heard that there was rumor going around—

Q. Mr. Sweet was your general manager?

A. Yes. Heard it rumored that District 50 was going to organize the men. Next thing I knew I was in Washington, he told me Mr. Fohl, Mr. Shuey and Wood had been to see him and told him they represented (P. 41) the majority of our workers and they wanted to talk about wages and hours and a contract. I came home the next day and he had a letter from Mr. Fohl confirming it which he handed me and we discussed it and prepared jointly, answer we made to that letter.

Q. How was nat letter signed?

A. By Mr. Fohl, Regional Director District 50 UMW.

Q. You did have correspondence and sometime in January the strike started?

A. Yes, sir.

Q. When did it start?

A. January 9 at the six o'clock shift.

Q. 1953. Did you check your records to see if District 50 did represent a majority of your employees?

OBJECTION BY DEFENDANT.

Q. Did you try to find out whether District 50 actually represented the majority?

A. Yes, sir. When Mr. Sweet called me in Washington and told me of the visit I asked him how many people we still

had on file with written statements they were workers with Stone Workers Union. He said he had no notice of anybody withdrawing.

THE COURT: Was the number of your checkoff more than half of the employees?

A. It was more than two-thirds. Membership had been running about three-fourths of our people. Say four hundred eligible about three hundred belonged to the union. Of them (P. 42) almost all of them signed these statements to us authorizing us to deduct their dues.

THE COURT: You didn't check off with respect to any employee unless you had written statement?

A. He had the right to withdraw that statement any time he chose. At the time Mr. Fohl made this statement that they represented the majority of our workers we had on file written statements from two-thirds of our employees saying they were members of Stone Workers Union and authorizing us to deduct from their payroll and remit every month.

Q. How much was it every month?

A. Month of December $560.00.

Q. How much for the employee?

A. $2.00 each month.

BY MR. FULLER:

Q. Was there so far as you know any attempt or move made for the de-classification of Stone Workers?

A. None that we ever heard of.

Q. De-certification. This morning there was examination of the witness who preceded you with reference to a visit to New York. Will you tell His Honor about that? First, why you went there, who was there and what you did and where you did it?

A. After we received word either by letter or verbally, I have forgotten which, Mr. Foreman had been appointed administrator of Stone Workers Union, I made inquiry to find out what that meant, (P. 43) what our duty was under such circumstances. I called Mr. Scott, President of the Union. I said, "I never heard of an administrator of a union. Do you have power to do that? Do we deal with this administrator? What is the legal situation about it? I want to know. I don't know Foreman." He said, "He is our representative. It is perfectly legal". I said, "I would like to hear from your legal department on that so I can be satisfied." He said he had a lawyer in Boston and he would have this Boston lawyer come to see me. I said, "I have to go to New York to our annual meetings", we have three companies and had our meetings up there which takes several days. He said, "If you are going to New York it would save a lot of trouble for I can get my man to meet you there instead of coming here". He said he would arrange that. I was staying with my wife at the Astor Hotel. Mr. Sweet came up and I told him Mr. Scott had made arrangements for me to see this lawyer and I would like for him to be present, so they came to my apartment at the Astor Hotel, Mr. Sweet and I for the Company, Mr. Scott, Mr. Foreman and this Boston lawyer for the union. We had a conference which had entirely to do with the legality of the appointment of Mr. Foreman to represent this union and his power to negotiate negotiations with me. He showed me the constitution of the union and told me it was a thing done quite frequently and nothing unusual about it. I talked to the management of the Labor Board in person and they told me should deal with him. Also ...d with Winston-Salem office of the National Labor Relations (P. 44) Board. They told me the same thing. In the meeting in New York the one thing discussed was the question of legality of the appointment of this man as administrator and what we were to do about it. We then made engagement to return to North Carolina and there talk about details of the contract and negotiations and there was in the meetings with us the president of the local union and Stone

Workers, Frank Swan, Martin, a colored man, foreman in the mill, and Pittman. They were asking 15 cents increase. We compromised on twelve and a half cents subject to the stabilization board. That was all that was done in the meeting in New York as I recall. That was the purpose of the meeting, to save expense of bringing his Boston lawyer to North Carolina.

Q. Who was Pittman?

A. One of our employees at the mine.

Q. Representing Stone Workers?

A. Yes, sir.

Q. I ask you if since 1946 you have continuously dealt with Stone Workers as certified bargaining agency with no interruption down to today?

A. That is true.

Q. They are still certified agents?

A. Yes, sir. I would like to make this statement if permissible—

OBJECTION BY DEFENDANT OVERRULED.

On cross examination of Mr. Scott he was asked if he was a tool of the company. We have had a great many negotiations in which (P. 45) Mr. Scott was present and others when he was not there. Our negotiations lasted over long periods of time. In many instances, the year before this, it looked like we were going to have a strike on their account. Had to get mediators, federal and state. They would insist on wages impossible to grant. The result was compromise but there have been constantly and consistently real negotiations and no rubber stamps.

(Page 45)

Q. You said a moment ago you had some difficulty in dealing with Stone Workers. Is that correct?

A. Yes, sir, had a lot of stormy negotiations with them.

Q. To such a point a crisis arose?

A. Yes, we had a mediator.

Q. How many times they ever appointed an administrator?

A. Only once.

Q. That was when Stone Workers were dead and administrator appointed?

A. No, sir. I talked to the President and he said only twenty out of two hundred and seventy-six that wanted to join District 50 and they kept up such a ruckas they had to ap. oint an administrator.

Q. Why didn't you apply for appointment of a mediator?

(P. 46)

A. Didn't need one then.

Q. Who appointed Mr. Foreman?

A. I didn't have anything to do with it.

Q. Did you have a mediator appointed to determine whether Stone Workers or United Mine Workers had authority?

A. More than two-thirds of our employees were members of Stone Workers. I didn't think we needed any other evidence.

(Page 54)

A. You knew a good many of your workers by name?

A. Yes, sir.

Q. Did you contact any of them and ask them if they wanted to have an election?

A. I talked to Mr. Frank Swan, President.

Q. He was the man to help you decide how much you would pay them?

A. He was the president and had been a good while. I asked him how many he thought wanted to change. He said twenty he thought and not more than twenty-five.

Q. Did you go out and have a survey made?

A. I didn't but we talked to our people all the time.

(Page 62)

C. R. WILLIAMS, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FULLER:

Q. What is your name?

A. C. R. Williams.

Q. Your duties?

A. Member of the State Highway Patrol.

Q. With the rank of captain?

A. Yes, sir.

Q. I believe in January, 1953 when we had the hearing in this court in which you testified you were then a lieutenant?

A. Yes, sir.

Q. In the course of your duties did you have occasion to visit the premises of Tungsten Mining Corporation around January 9, 1953?

A. No, Sir. I was ordered there January 13, 1953.

Q. What was the purpose of your going there?

A. I was ordered to the mine for the purpose of maintaining order on the highways near the mine.

Q. Were you accompanied by any other officer?

A. Yes, sir, Captain Lewis went with me and later Corporal Rawles and Sergeant Cook joined us.

Q. Will you tell the Court what you saw and what you did when (P. 63) you got to the mine?

OBJECTION BY DEFENDANT OVERRULED.

A. I arrived at the mine about six P. M. on the 13 of January. There was a crowd of men at the main gate of the mine, about thirty or forty men. I just talked with those men briefly and then went inside the office and talked with Mr. Bailey,

THE COURT: Was that in the evening?

A. Yes, sir, six P. M.

for the purpose of getting orientated. Then I went back to the main gate and talked with the pickets some more and assured them that we were neutral and were there to maintain order and to keep the highways open. At about seven-thirty I met Mr. Wood and Mr. Robinson at the gate. They were represented to us as representatives of the union.

(P. 63)

Q. Was that Mr. Lucian L. Wood?

A. Yes, sir.

Q. He is in court now?

(P. 64)

A. Yes, sir.

Q. Anybody with him?

A. A Mr. Robinson with him.

Q. What did you and Mr. Wood and Mr. Robinson do after you met them?

A. I invited Mr. Wood and Mr. Robinson to come into Henderson and have a meal with us. It was pretty late and we hadn't had anything to eat. They said they had had their meal but would come with us and have coffee. We did and went to a restaurant on Highway No. 1 North of Henderson. During the course of that meal we discussed the strike. Mr. Wood gave me his card and at first he told me he represented United Mine Workers, District 50. I was not familiar with the setup and I asked him to explain what significance that had and he explained to me, I don't recall now just what he said, it was more or less antonomastic and more or less United Mine Workers but had its own office, and so forth. I told him our mission was to keep the highways open, that we were going to be neutral and asked his support and he and Mr. Robinson pledged their support. After that we went back to the mine.

THE COURT: Is Mr. Wood in court?

A. Yes, sir.

Q. How about Mr. Robinson?

A. I haven't seen him.

THE COURT: Would it be possible to have an agreement or stipulation who they were at that time?

(P. 65)

MR. ARENDELL: Yes, sir. We will admit they are representatives of District 50. Both are in court.

MR. FULLER: Will you make the same admission as to Mr. Fohl?

MR. MAUPIN: No, sir.

THE COURT: I don't want to press it but it seems to me it would be orderly and proper. There is no point in not having the agreement but you gentlemen do what you wish.

MR. ARENDELL: We say Mr. Wood and Mr. Robinson represent District 50 and went with this gentleman to supper but we don't admit they had anything to do with the strike.

THE COURT: I am not suggesting that. I just asked was there an agreement that they were representatives of the Mine Workers District 50 and you admit that without admitting that they represented the pickets or had anything to do with what was going on at the mill.

BY MR. FULLER:

Q. Mr. Williams, when you first saw Mr. Wood and Mr. Mr. Robinson where were they and who were they with?

A. They were at the main gate of the tungsten mine on the evening of January 13, 1938 in the crowd of pickets at the main gate.

(P. 66)

Q. Did you see any violence or hear any threats at the picket line later on or at the highway later on that day?

OBJECTION BY DEFENDANT OVERRULED.

A. Yes, sir. At 11:40 P.M. on the night of the 13th, two cars, the first one containing one white man—

THE COURT: You went with Mr. Wood and Mr. Robinson to have supper?

A. Yes, sir and then went back.

Q. They met you at the cafe and they left alone and you and your associate went back to the mine?

A. Yes, sir.

BY MR. FULLER:

Q. You know where Mr. Wood and Mr. Robinson went when they left the cafe?

A. No, sir.

Q. Didn't see them any more that night?

A. Yes, sir, I saw them some more.

Q. When did you next see them and where?

A. These notes were made that night. (Witness holding in his hand some paper). At 11:40 P.M. two cars came out. One car contained one white man.

Q. Came out of where?

A. The main gate of the mine. The second car had five colored men in it. The pickets at the main gate asked us to hold those two cars up so they could talk with those people in the cars. Said (P. 67) they didn't want to hurt them but just to talk with them. We refused to do that. We left the main gate and escorted those two cars into Henderson. We turned the first car over to the Henderson police, which contained only the white man for escort. We escorted the second car, containing five Negroes, and ended up in Macon. We stopped at another place or two but en route we needed some gas and stopped at highway patrol station to gas up. While stopped there the cars with men who had fallen in behind us as we left the mine stopped at that highway patrol station also. While we were gassing up some of them attempted to talk with the five occupants of the car who had the windows cranked up. They knocked on the windows. A couple of them suggested turning the car over.

OBJECTION BY DEFENDANT.

MR. ARENDELL: Mr. Wood or Mr. Robinson were not there as we know of. It was away from the mine.

THE COURT: It is a part of the case so-far as I see. If plaintiff can bring it home to the defendant it becomes a vital proof in the case.

THE ABOVE OBJECTION IS OVERRULED.

(Answer continued) A short distance after we left the patrol station one of the cars in the line trailing us squeezed out of line and forced highway patrol car almost off of the road. The patrol car that was forced off of the road subsequently stopped that car. We arrived in Warrenton and put out some of the passengers and then proceeded on to Macon where we let the others go. That (P. 68) ends that night and that escort.

THE COURT: Did you hear any conversation between these parties, the ones that you say were following and the ones being escorted?

A. Yes, sir. When we stopped to gas up the people following us stopped there too and they wanted to talk with these occupants of the cars and did talk with them. For instance, one of them said to the people in the car, "How did your windshield get broke?", and laughed, "Ha-ha!"

Q. Was it broken?

A. Yes, sir, and some were cursing and daring them to get out. Others in the group were talking to them in a civil sort of way and trying to persuade them not to go back to work. It was a mixture of emotion. Some were belligerent and some were reasonable.

BY MR. FULLER:

Q. Do you recall being at the mine premises January 14, the next day?

A. Yes, sir.

Q. About what time of day or night was that?

A. I was there just about all the time. I slept very little and stayed at the mine most of the time.

Q. Did you see Mr. Wood there?

A. Yes, sir. I saw Mr. Wood there at about 7:45 P.M. There were about thirty pickets having a fish fry when I arrived about 7:45 (P. 69) on the evening of January 14, and a deputy sheriff was at that time serving a restraining order. He fastened a copy on a fence near the main gate. At about 8:15 Mr. Wood arrived at the scene and was shown the restraining order.

Q. Who showed it to him?

A. I am not quite clear on that at this time. I know a few minutes later he came on the public address system attached to an automobile and made a talk and he read the restraining order.

Q. Just before reading that did he identify himself over the public address system?

A. I made notations as he was talking. I have them here as I made them that night. That was 11:45 when he began talking and arrived there at 8:15 but didn't start his speech on the public address system until 11:45.

Q. Did he introduce himself?

A. Yes, sir, he identified himself.

Q. How?

A. I couldn't give it verbatim. He said "This is Lucian Wood" and gave his connection. He was representative of District 50. He said, "This afternoon Judge Clawson Williams issued restraining order against District 50 and others." I have a copy of the restraining order which I had then, and I followed him as he went down the various items. He read sections one and two and then commented, "A bunch of malarky. We are

not going to hurt people. We are going to be damn lucky to ride the highway". He read that (P. 70) third section without comment and then the fourth and said, "We are going to have six pickets here at the main gate and six pickets at Snead."

THE COURT: The restraining order limited the pickets to six at each gate?

A. Yes, sir.

BY MR. FULLER:

Q. He was proposing to comply with the order?

A. Yes, sir. He said, "After the contract expires at midnight tonight you have no contract. After this it is District 50. There will be no pickets and no signs down the road where we have been." That was granting my request. About three hundred yards down the road was a group of pickets with fire on their shoulders and I requested Mr. Wood to have it discontinued. This was in compliance with our request: He said, "There will be no pickets and signs down the road where we have been. You will have to pass the word on that only six pickets allowed." Then he explained the pickets no closer than a hundred feet and stated the time and place they would have to answer to cause to the restraining order. He told the men to go along with the orders until the young man got to this language, "We are going to obey this thing to the letter. If any threatening or abusive action towards you men we will take legal action. I think some of you boys will be allowed to walk the highway. I think you should be allowed to walk the highways. I think you have the right to drive your car. We will move that (P. 71) picket sign down through this hole. We will have to be on the lookout for men coming in on assignment and send some of them back." Then he discussed having more than six men at the change of shift until they got organized. He then advised the audience they would continue the practice of holding meetings; cautioning the men to leave only six pickets.

THE COURT: You say he referred to something as a lot of malarky?

A. Yes, sir, items one and two.

Q. He was not referring to the order of the Court but was saying they had not been doing what was set forth as prohibitory?

A. That was the inference I got. Item one was interfering in any manner from free ingress and egress, Item two from assaulting and so forth.

BY MR. FULLER:

Q. Did Mr. Wood make any statement in your hearing as to who was conducting the strike?

A. He said "After midnight you have no contract. From then on it is District 50." That is the only specific thing I recall that he said.

Q. When was the first time you saw the picket signs that had on them "District 50, United Mine Workers"?

A. I am vague about that. I would be guessing.

Q. Was it around the 15th?

(P. 72)

OBJECTION BY DEFENDANT OVERRULED.

A. I would say in my opinion they appeared about the same time the public address system was to be on. The signs came on the scene, as I recall, the night of the 14th. In fact Mr. Wood told me he would have the pickets remove the signs down at the picket line they had on the highway about three hundred yards from the main gate. That was at my request but what was on those signs I don't know.

Q. Did you see any button, "I am a Union Member of District 50. Are you a member?"

A. Yes, sir.

Q. Where did you see those?

A. All the pickets practically were wearing them.

Q. You didn't see them distributed?

A. No, I didn't.

Q. Did you have any other discussion with Mr. Wood regarding meetings?

A. He asked me about a meeting at the ball park, if it would be permissible. I told him that was off of the highway and it was none of my affair.

Q. Did you make any arrest of the employees or strikers?

A. I arrested one Fred Scott for assault, hit and run.

Q. Did he make bail?

A. His bail was set at a very high figure by the justice of the peace, Mr. Finch. I believe it was a thousand dollars. Anyway a (P. 73) pretty high figure. Mr. Foll, Mr. Robinson and Mr. Wood came to our office and asked could I assist them in getting that bond reduced. I called Mr. Finch and suggested that the bond was a little out of line. I didn't say it in those words. I had to be careful about judicial matters but I did get it reduced to five hundred.

THE COURT: You mean you were diplomatic?

A. I didn't want to get in hot water.

(Page 73)

JAMES R. SWEET, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FULLER:

Q. Your name?

A. James R. Sweet.

Q. Where do you live?

(P. 74)

A. Henderson, North Carolina.

Q. Your business?

A. General Manager and Vice President Tungsten Mining Corporation.

Q. Was that your position at the time of the strike?

A. Yes, sir.

Q. And that was your position in January 1953 and has been ever since?

A. Yes, sir.

Q. How long you been with the company?

A. Since October, 1948.

Q. Do you recall a visit to your office the 16 of October, 1952 from some people who said they were representatives of District 50?

A. Yes, sir.

Q. Who were they?

A. Mr. Robert R. Fohl, Mr. Walter H. Shuey and Lucian Lincoln Wood.

Q. Is Mr. Shuey here?

A. I don't know whether that is Mr. Shuey with the glasses on or not.

BY MR. GREEN: He is here.

Q. When did they come to see you?

A. October 16, at Noon time. They came to my office and asked to see me there.

Q. Tell the Court what you said and what they said.

A. When I was advised that they were in the lobby of the building—

Q. Where was this?

(P. 75)

A. At the mine office of Tungsten Mining Corporation. I went out in the lobby and introduced myself. Mr. Fohl introduced himself as being representative of District 50, Mine Workers Regional Director, and introduced me to Mr. Wood and to Mr. Shuey. Mr. Fohl told me that was a courtesy visit.

Q. Tell you who Mr. Wood and Mr. Shuey were?

A. Later he told me Mr. Shuey was representative of District 50, United Mine Workers, and that he was resident in either Virginia or West Virginia, and Mr. Lucian Lincoln Wood was introduced in my office as being representative of District 50, United Mine Workers, and resident of Raleigh, North Carolina. After being in my office Mr. Fohl handed me his card and told me a majority of our employees had signed up with the union, District 50, and went on to explain that District 50 represented the employees of a number of other plants in North Carolina and outside of the state, one plant I remember being a chemical plant in Virginia. Mr. Fohl explained further that they got along well with these companies and employees. He said he wouldn't use the facilities of the National Labor Relations Board but we could use federal mediator or North Carolina Stabilization Labor Conciliator but under no circumstances would use the facilities of the National Labor Relations Board. He stated that they were not always successful in obtaining rights to represent employees of an organization but that they would resort to strike if necessary. As I recall he concluded the interview by stating under no condition would he use the facilities of the (P. 76) National Labor Relations Board.

Q. You say Mr. Fohl gave you a card. Do you recall what that card had on it?

A. Yes; it was a business card indicating he was a representative of District 50, United Mine Workers.

Q. Have his name on it?

A. Yes, sir.

Q. Then that was the end of that meeting.

A. Yes, sir.

Q. Did he tell you why he didn't want to use the facilities of the National Labor Relations Board?

A. No he didn't.

THE COURT: You knew?

A. Yes, sir. I had a very good idea.

BY MR. FULLER:

Q. At the time of this conference you have just testified to do your records indicate who represented a majority of the employees as bargaining union?

A. Yes, sir.

Q. Who was that?

A. Stone Workers.

Q. What records do you refer to?

A. Checkoff authorization of the employees. Members of the union pay their dues to the union through the company.

Q. Could the signers of those cards revoke them any time they (P. 77) wanted to?

A. Yes, sir.

Q. Are they compelled to sign them?

A. No, sir.

Q. It was a free and voluntary action?

A. Yes, sir.

THE COURT: You remember how many you had on the checkoff list at that time?

A. Not exactly. Probably two hundred and fifty or seventy.

Q. Out of how many employees?

A. Slightly less than four hundred. I have in mind around seventy percent of the membership that could have union membership.

Q. Had any of those employees who had signed the checkoff been to you and made statement about desiring to withdraw their authorization?

Q. And had there been any withdrawal just before the strike occurred?

A. There are a number of withdrawals made, five over a period of a month or two months.

Q. That is preceding the visit of Mr. Fohl and his associates?

A. About that time.

Q. Did you go into any explanation to him when he said you (P. 78) could resort to a mediator? Did you give him explanation why you were not willing to do that or why you thought it was unnecessary to do it?

A. No. He initially stated it was a courtesy visit and when he said his union represented a majority of the employees I didn't believe that. That was the basis for thinking on my part no discussion was needed.

Q. You thought he was poorly informed about it?

A. I figured he was wrongly informed.

BY MR. FULLER:

Q. I hand you a letter and ask you who it is from?

A. Letter dated October 17, 1952 from Robert R. Fohl, Director Regional 19 to myself.

Q. That was received and read by you?

A. Yes, sir.

Plaintiff introduces in evidence letter dated October 17, 1952, from Robert R. Fohl to Mr. J. R. Sweet, marked "P-8".

Q. I hand you a paper and ask you to tell me what that is?

A. Copy of letter written October 21, 1952 by myself addressed to Mr. Robert R. Fohl.

Plaintiff introduces in evidence copy of letter dated October 21, 1952, addressed to Mr. Robert R. Fohl from Tungsten Mining Corporation, signed by Mr. Jas. R. Sweet, Vice-President and General Manager, and marked "P-9".

Q. I hand you a paper. What is that?

(P. 79)

A. Notice signed by W. L. Long and myself published at the mine October 21, 1952. Notice addressed to our employees in respect to District 50 and their request for a conference. This was posted at the mine and also was given out with all the checks issued to the employees. We have a number of bulletin boards at each gate to the mine and posted on that.

Plaintiff introduces in evidence notice signed by W. L. Long and J. R. Sweet, dated October 21, 1952 and marked "P-10".

Q. Mr. Sweet, I hand you another sheet of paper and ask you to identify it.

A. This is second notice signed by W. Lunsford Long and myself, statement of company policy dated October 27, 1952.

Plaintiff introduces in evidence notice signed by W. Lunsford Long and J. R. Sweet, dated October 27, 1952, and marked "P-11".

Q. I hand you another paper and ask you to identify that.

A. This is a copy of a notice signed by J. B. Foreman, Administrator for Tungsten Local 98, addressed to fellow workers, dated December 19, 1952, by which he sets forth the major changes subject to the approval of the wage stabilization board.

Plaintiff introduces in evidence copy of notice signed by J. B. Foreman, Administrator for Tungsten Local 98, addressed to "Fellow Workers", dated December 19, 1952, and same is marked "P-12".

(P. 80).

Q. What is this paper?

A. This is job classification, wage rates, showing rates prior to the wage increase granted on December 18, 1952, and proposed rate which would be effective January 15, 1953 subject to the approval of the wage stabilization board, dated December 18, 1952.

Q. Was this brought to the attention of the mine employees?

A. That was posted on the mine bulletin boards on December 18.

The plaintiff introduces in evidence job classification, wage rates, etc., dated December 18, 1952, marked "P-13".

Q. I hand you two sheets of paper to which is attached memorandum and ask you to identify those.

A. Letter addressed to National Labor Relations Board, Washington, dated October 30, 1950, written by Robert R. Fohl, Director of Number 19. We received a copy of this at the mine.

Plaintiff introduces in evidence copy of letter to National Labor Relations Board signed by Robert R. Fohl, Director of No. 19, dated October 30, 1950, marked "P-14".

Q. THE COURT: Mr. Fohl, when he wrote that letter, sent you a copy?

A. Yes, sir.

Q. The copy introduced is that copy?

A. Yes, sir.

BY MR. FULLER.

Q. I hand you another two pieces of paper and ask what that is.

A. Letter written by Robert R. Fohl, Director Region 19, dated (P. 81) October 22, 1952, written to myself.

Plaintiff introduces in evidence letter from Robert R. Fohl to J. R. Sweet, dated October 22, 1952, marked "P-15".

Q. You did have a meeting, as the notice showed, and wage increase granted. Who met at the mine when they negotiated the new wage contract? Who was present?

A. For the company Mr. Long, Mr. Bailey and myself. For the union Mr. Foreman and Clem Martin, a boy from the mill, and Frank Swan, President of the union.

Q. Where did those negotiations take place?

A. In Mr. Long's office at the mine.

Q. How much time did they consume?

A. Just how much time on the 17th—we generally met at ten A.M. Whether we met that day at that time I don't recall, but we met on the 17th and on the 18th we came to an agreement.

Q. Who entered into the discussion?

A. Everybody present.

Q. Then it was a general discussion of the terms and conditions?

A. Yes, sir.

Q. On the dates that those negotiations were held what did your checkoff card show with respect to the Stone Workers Union?

A. It would show that a majority of the employees of the mine were members of the United Stone and Allied Products Workers of America.

Q. Can you give us approximately the number of checkoff cards you had on the day in question?

(P. 82)

A. About 260. About seventy percent.

Q. Mr. Sweet, after the strike began on the 9 of January, 1953 did you see the signs that were up at the picket line and other places?

A. Yes.

Q. What did they say?

A. First sign I saw said, "On Strike", as I recall, and that is all it did say.

OBJECTION BY DEFENDANT OVERRULED

Q. Did you see the photographs presented to the Court yesterday?

A. Yes, sir.

Q. Did they correctly represent signs the picket lines and carried by picketers?

A. Yes, sir.

Q. When were the signs carried by the picketers?

A. Signs carried by the pickets as I recall from the 10th, —I don't remember seeing any on the 9th,—from then on until January 30 I believe.

MR. GREEN: We object to any evidence relative to those pictures unless they can be identified as to time and the person making such pictures, and we ask that the evidence relative to the pictures be stricken unless they can designate the time that the pictures were taken. We think the time is a very important element.

THE COURT: Those photographs are being offered and only (P. 83) considered by the Court to enable the Court to understand what he is talking about. He says those photographs represent what he saw there practically every day from the 10th to the 30th.

THE WITNESS: With the exception on the 15th that sign showed only "On Strike".

BY MR. FULLER:

Q. After the contract of December 18 did they continue grievances for their members?

A. Yes, sir.

Q. Do you recall the instances?

A. Junius Robinson January 6 heard by the grievance committee which never came up to me. The president of the union was there, mine foreman was there, and mine superintendent was there and also Mr. Bailey I believe.

Q. Did all such grievances come up to you?

A. No, very few came up to me.

Q. I hand you several sheets of paper and ask you to identify them if you can.

A. Tabulation showing list of employees, during the period October 17, 1952 to January 9, 1953 It gave the name of

the employees, checkoff authorization for four different days, October 8, 1952, December 1, 1952, December 18, 1952 and January 9, 1953. Also the number of employees as of that time.

Q. Checkoff authorizations for what?

(P. 84)

A. Union dues to the Stone Workers. It is tabulated on the last sheet.

THE COURT: What does it show the total to be, total of members and total of employees?

A. October 18, 1952 checkoff authorizations 276 and employees were 388. On December 1, 1952 checkoff authorizations 265 and employees 402; December 18, 1952 checkoff authorizations 258, employees 402; January 9, 1953 checkoff authorizations 246 and 406 employees.

Q. Between the last two dates there was a withdrawal of certain number of employees.

A. October 18, 1952 276 against 230, and 258 and 246.

Q. Do you recall what those withdrawals were for?

A. Could be individual leaving the operation and automatically cancelled. I think in one case employee promoted from miner to shaft boss.

Q. Is there a case of an employee withdrawing authorization for the reason he no longer belonged to the union?

A. No, sir, not to my knowledge. I think not.

Plaintiff introduces in evidence:

Tabulation of list of employees and checkoff authorizations during period October 17, 1952 to January 9, 1953, marked "P-16".

OBJECTION BY DEFENDANT OVERRULED.

Q. I hand you another paper and ask you to identify that.

A. This is a press release dated January 10, 1953, signed by Cor- (P. 85) dell Holloman.

Q. Have you see Mr. Holloman's signature?

A. Yes, sir.

Q. Is that his signature?

A. Yes, sir.

Q. Are you familiar with the handwriting of Mr. Fohl?

A. Yes.

Q. Is that press release written in his handwriting?

A. In my opinion it is.

Plaintiff offers in evidence press release signed by Cordell Holloman, marked "P-17".

Q. Mr. Sweet, did that statement later appear in the public press?

A. Yes, Henderson Daily Dispatch, January 12, 1953.

Q. I hand you these papers and ask you to identify them.

A. The contents of that letter sets up what is in this paper.

Q. What is that paper?

A. Henderson Daily Dispatch, January 12, 1953.

Q. And the statement is in full?

A. Yes, sir.

Q. On what page?

A. Page four.

Plaintiff offers in evidence copy of Henderson Daily Dispatch, dated January 12, 1953, specifically the article

on page four beginning "Tungsten Mine is on Strike", said article being marked "P-18".

(P. 86)

Q. Mr. Sweet, for those periods you testified about in that checkoff list, how much was the checkoff from each employee on each date?

A. Those were all covered by checks. Checks for authorization, $2.00.

Q. How much for each employee?

A. $2.00.

Q. Did you actually check those off and remit to the Stone Workers Union?

A. Yes, sir.

Q. Do you have the checks for that?

A. Yes, sir.

Q. Will you get them?

A. These are the checks.

Q. For the three periods you testified about?

A. Yes, sir.

Q. They are checks for each month?

A. Yes, sir.

Q. Do these cancelled checks cover the period you testified about by referring to this checkoff list?

A. Checkoff monthly.

Q. These cover the period February 11, 1952?

A. Not necessarily.

Q. What periods do they cover?

A. Check written January 9, 1953 for the preceding month.

Plaintiff introduces list of checks for checkoffs, marked "P-19".

(P. 87)

Q. What are the other checks?

A. December 12, 1952. That would cover the preceding month. November 7, 1952. That would cover for the preceding month. This one is dated October 10, 1952. That would cover for the month of September, 1952. One written out dated September 12, 1952 and that would be for the preceding month. One dated August 8, 1952 for the preceding month.

Q. Who are they payable to?

A. Stone Workers.

Q. Who is the payee?

A. Mr. R. D. Card, Secretary and Treasurer.

Q. Who is this one made payable to?

A. J. B. Foreman, Administrator Local 98.

Q. They were for the checkoff union dues for the workers?

A. Yes, sir.

Q. Did you testify what position you hold with Tungsten Mine?

A. General manager and vice president.

Q. Among your duties do you keep records of the receipts and disbursements and profits and loss and keep books for the company?

A. Those are under me. I am in charge of them.

Q. How long was the work interrupted at the mine by reason of the strike?

OBJECTION BY DEFENDANT OVERRULED.

A. From the afternoon of the strike the work was actually interrupted for several months, normal routine.

(P. 88)

Q. How long was production interrupted by reason of the strike?

A. Period of eight or nine days we didn't have any hoisting done at the mine and subsequent days when production was low.

Q. Took some time to get back to normal?

A. Yes, sir.

Q. How long?

A. Several months.

Q. Have you some figures available you could refer to and give the court information about the loss suffered by reason of the strike?

A. Yes, sir.

Q. Estimated statement of profit lost by Tungsten Mining Corporation due to the strike.

. . .

(Page 99)

Q. Mr. Sweet, on or about the 9th or 10th of January, or thereabouts, did you see Mr. Wood?

A. Yes, sir.

Q. Where was he?

A. He was with a group of employees at the entrance to gate No. 7 shaft, main entrance to the mine. I saw him when I drove into the office.

Q. Was there a picket line?

A. A large group.

Q. Were they strikers?

A. Yes, sir.

Q. What was he doing?

A. Standing among the group of employees, and when I passed by he said something to me. I don't know what it was but I expressed the opinion when I got to—

OBJECTION BY DEFENDANT SUSTAINED.

THE COURT: This strike was called for six-thirty on the 9th?

A. Yes, sir.

Q. You are talking about the following day?

A. Yes, sir.

W. L. LONG, recalled, testified as follows:

REDIRECT EXAMINATION BY MR. FULLER:

(Page 184)

It is stipulated that Mr. Robert R. Fohl is a Regional Director of United Mine Workers District 50 and was occupying such position in the month of December and January of 1952 and 1953 respectively.

It is stipulated that Mr. Walter A. Shuey was Field Representative of United Mine Workers District 50 during the month of October, 1952 through January, 1953.

(P. 185)

B. B. BAILEY, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. GHOLSON:

Q. Please state your name.

A. Benton B. Bailey.

Q. Were you employed by Tungsten Mining Corporation in January of 1953?

A. I was.

Q. In what capacity?

A. Assistant to the general manager.

Q. Calling your attention to January 13, 1953 was there a disturbance at your gate of the tungsten mine on the morning of January 13?

A. Yes, sir.

Q. State to the Court what happened.

OBJECTION BY DEFENDANT OVERRULED.

A. On the morning of January 13 there were a number of men in Oxford that desired to come to work at our plant. We had promised these men we would furnish transportation and escort them to the plant so early the morning of January 13 I drove my car and accompanied by two guards in a company car we drove to Oxford and picked up these men, I believe eight or nine in number. From Oxford we then proceeded towards the mine. In the little town of Stovall was another group of men. As I recall there were five that also desired to go to work and so I put them in the convoy with the rest of us, guard car in front, this other car between us and mine (P. 186) in the rear. We proceeded to the mine. As we approached the mine in the vicinity of No. 7 shaft a car that had been following me got in front of us and blocked off myself and the car preceding me. The guard car went on. I told the boys to stay in the car but to lock the car. I got out. By the time I got out somebody, Mr. Williamson, struck me and the fight lasted five minutes.

Q. Who was that?

A. He had been a former employee of the company.

THE COURT: The men you had in the car didn't get in the fight?

A. No, sir.

Q. What injury did you sustain?

A. I had one tooth knocked out.

Q. State whether you saw George Pendley on the picket line at that time?

A. Yes, sir.

. . .

(Page 187)

RE-DIRECT EXAMINATION OF MR. B. B. BAILEY:

Q. State whether or not during the period of the strike at Tungsten you saw Mr. Lucian Wood on the picket line.

A. I did.

Q. Know what dates that was?

A. No, sir.

Q. You are sure it was Mr. Wood?

A. Yes, sir.

Q. How many days you see him out there?

A. That I can't recall. He was pointed out to me one time.

(P. 187)

. . .

L. R. McCLELLAND, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GHOLSON:

Q. State your name.

A. Louis R. McClelland.

(P. 188)

Q. During the month of October, in the fall of 1952, and in January, 1953 were you working for Tungsten mine?

A. I was.

Q. Were you a member of Stone Workers Union at that time?

A. I was.

Q. State whether or not during the month of October, 1952 you ever attended any organizational meeting of District 50 of United Mine Workers?

A. I attended one on the ball diamond but I don't know the date.

Q. In what month?

A. Not to be sure but I say the latter part of October or the first of November.

Q. State whether or not you knew Mr. Shuey at that time?

A. I knew who they said it was.

Q. Hear Mr. Shuey make any speeches at that organizational meeting?

A. Yes, sir, heard him make a speech.

Q. What did he say?

A. He was talking to the crowd and said he might have to strike to get recognition, "If we do we will", and if he had

to he would send one and if that didn't do he would send two and if that won't enough he would send enough until it did work.

Q. Say anything about a picket line?

A. Yes, sir, said something about a picket line.

Q. Did Mr. Shuey at the time he was making the talk state who he (P. 189) was?

A. Yes, sir. Said he was Mr. Shuey and was representing District 50 of United Mine Workers.

. . . .

(P. 189)

Q. What statements were made, if any, by any of the employees after that meeting about what might happen to people attempting to get through the picket line?

A. Statement made about houses might be dynamited and things like that.

MOTION BY DEFENDANT TO STRIKE. THE MOTION IS DENIED.

Q. Did you go to the mine on January 9, 1953?

A. I did, sir.

Q. What happened there?

A. I was on the six o'clock shift and when I got to the gate—

Q. Six P.M.?

(P. 190)

A. Yes, sir. A crowd drove up and a fellow got out and told me—

OBJECTION BY DEFENDANT OVERRULED.

that we were striking. I said, "Good. Maybe we will get it over with. I have heard enough about it. I am going in and see how a majority of the men feel." I went on in and five or six of us in there. I changed clothes. Three of us walked to the front of the main office and a crowd had ganged up around the gate and told me I would either have to go to work or get out. I looked at the two fellows and said, "Are we going down?" They said, "We are afraid to." I said, "I don't feel so good about it and we better change clothes." We changed clothes and came out of the gate.

Q. Did you see James Journigan?

A. Yes, sir.

Q. Where was he?

A. Among the men standing there talking.

Q. In the picket line?

A. Yes, sir.

Q. Who is he?

A. He was an employee of Tungsten mine at that time.

Q. You say he was on the picket line?

OBJECTION BY DEFENDANT OVERRULED.

A. He was, but before the picket line was formed out there that night. He was supposed to go in on the six o'clock shift. They were talking—

OBJECTION BY DEFENDANT.

(P. 191)

Q. What did he say to you?

A. What I was getting around to, he thought—

OBJECTION BY DEFENDANT.

that Mr. Pack and Elbert Hayes and Daniel Raper came down to work. Going to catch me and Mr. Pack if going to work

and give us a whipping for going to work and the other three going to duck in the creek, Clifton, Elbert Hayes and Daniel Raper who lived in Henderson.

. . .

(P. 191)

It is admitted by defendant that the pictures in the possession of plaintiff were taken the 27 of January, 1953.

Plaintiff offers in evidence five photographs of the signs and same are marked "P-20, 21, 22, 23 and 24."

PLAINTIFF RESTS

Defendant moves for judgment of non-suit. The motion is denied.

ROBERT R. FOHL, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MAUPIN:

(Page 194)

Q. Do the checkoff cards you received from these employees state what they wanted you, that they wanted you, Mine Workers of America, to represent them as their bargaining agent?

A. It does.

Q. Are these the checkoff cards?

A. They are.

Q. How many are there?

A. It indicates here, and we have checked them, 386.

Q. Are they all signed by employees of Tungsten Mining Corporation?

OBJECTION BY PLAINTIFF.

A. I personally didn't sign them and from that standpoint I wouldn't know.

The 386 checkoff cards are marked for identification "D-4".

THE COURT: You don't know whether they were employees?

A. Yes, I firmly believe it and have no reason to doubt it.

. . . .

(Page 197)

Q. How many members did you have at that time?

OBJECTION BY PLAINTIFF.

THE COURT: All he can say is he had what he considered definite portion of the majority of workers signed up.

Q. You didn't check to see if they were workers?

A. No, sir.

Q. You don't even know that they signed?

A. Personally no. We usually ask a person who contacts us how many people working in the plant and check it against that, and from what we understand was total number of eligible people.

. . . .

(Page 206)

CROSS EXAMINATION OF MR. ROBERT R. FOHL BY MR. FULLER:

Q. You know there was violence in this strike?

A. No, I don't.

Q. Haven't you heard that homes were dynamited?

A. I have read in the paper and have heard testimony here.

Q. Didn't you go down to get bond reduced?

A. That was a traffic charge. A five thousand dollar bond put on him and I thought he was being persecuted and not prosecuted.

Q. Didn't you sign or arrange his bond, you and others?

A. It is possible.

Q. You know some people were arrested for dynamiting a power pole and dynamiting a house and tried and sent to the penitentiary?

A. I don't know the facts. Our lawyers handled it but I believe I know about the incident you are talking about but when you have a strike such as this, somebody having a traffic charge and a high bond, that these men were being persecuted and not prosecuted.

(P. 207)

Q. In the dynamiting cases didn't you sign or arrange bail?

A. It is possible.

Q. Don't you know?

A. I am not certain which ones I did or didn't but I assume if I didn't a staff man did.

Q. In every case?

A. I don't know about every case but a good majority.

Q. In all dynamiting cases didn't you or a staff man arrange bond?

A. I don't know.

Q. Don't you know they were tried in Greenville County and convicted and sent to the penitentiary in the dynamiting cases?

A. I personally don't know.

. . . .

(P. 207)

Q. Didn't Mr. Wood report these dynamiting arrests and trial and convictions to you?

A. I heard about it in some manner, or heard about some of these cases. I was not there.

Q. I ask you if Mr. Wood or some other representative of yours (P. 208) didn't report it to you and if you in return didn't have to make a report on it?

A. The lawyers usually handle it.

Q. I asked you what you did.

A. I didn't do much of anything about it. I had passed the point even where negotiating agreement was working at recognition.

Q. Didn't Mr. Wood report the dynamiting cases to you?

A. No, I don't think so.

Q. Who did?

A. Do you mean the men being tried? If the men were arrested I could have or some of the staff men could have checked the bond or made bond.

Q. I asked you if the case was not reported to you?

A. I knew of various things going on.

THE COURT: Do you remember the dynamiting cases?

A. I believe there were some of those and I had read them in the paper.

Q. Anybody report them to you and if so how?

A. I don't know.

(P. 209)

BY MR. FULLER:

Q. I believe you attended an action in this court on the 29 of January, 1953 entitled "Re Johnston, Regional Director, against Tungsten" and testified in that.

(P. 210)

A. Yes.

Q. And I ask you if you didn't testify on direct examination about receiving copy of charges and amended charges and your office received them?

A. I believe so.

Q. This is a question of the examiner, "You received a copy of the charges and amended charges in this case by registered mail?" and you answered "My office received them and I have seen them. We are not questioning them." Question: "They were received approximately a day or two after the date on the charge, January 12 on one and January 14, 1953 on the other?" Answer: "I assume approximately those dates." Then I believe Mr. Davis, on cross examination, asked you your official connection with District 50. "I am Regional Director for the greater portions of Virginia and North Carolina", and then you testified that Mr. Wood and Mr. Robertson were under your supervision as regional director. Is that correct?

A. Yes, sir.

Q. Then you were asked when from your knowledge did District 50 first become actively interested in the situation at

Tungsten, first go in there to work among the employees and you testified about what you did just now, that you were in Cincinnati and heard they wanted some help.

A. I have not reviewed that since then.

Q. Now, you testified your representatives, from time (P. 211) to time, about what they were doing, and the rest seems to be as you testified this afternoon about telling them to try to avoid trouble and look after hardship cases. Then there is some question about starting the strike and I find in the record that you testified: "Irrespective of the fact we have in no way caused the strike we did feel that with the notices we gave, personal appearance and mailed to the Company that we had an interest that we could logically and properly inject the question we were still asking, for recognition from the 15th on."

A. That is true and that is substantially what I have said now.

Q. Then the Court said: "You say you had nothing to do with the strike before the 15th but since that time District 50 has participated in the continuance of the strike?" and you answered: "We absolutely had nothing to do with the occurrence of the strike nor the cause that could settle it peaceably because we have no bargaining authority. The place we felt we could ethically inject ourselves we had made every human effort. If it could be any other way to do it I would like for somebody to suggest it."

A. If that is what is there,— and it sounds like it.

Q. The Court asked you: "You say District 50 has been continuing the strike?" "We injected the question of recognition from the 15th on. Mr. Robertson had picket signs he had had somewhere else on display. I told them I didn't think we could raise it ethically until what was the normal notice

date we had given the company". "After January 15?" "We have displayed signs." I ask you if that (P. 212) is what you said under oath at the hearing I referred to?

A. If you are reading it and if it is taken correctly.

Q. The next question was, "You established strike headquarters?" to which you answered: "With the restraining order the men had no place to go. Restricted to six pickets. We thought it decent courtesy to get a pool room or somewhere the men could congregate. Otherwise they might violate the restraining order." Question: "District 50, since January 15, has participated in the continuance of the strike?" You answered "I had representatives there knowing what was going on".

(P. 212)

THE COURT: The suit was against the picketers?

A. Yes, sir, but they named us in the restraining order.

Q. But wouldn't you say it is fair to say that after the 15th of January your organization was involved in the continuance of the strike as divorced from violence?

A. You are correct.

(P. 213)

THE COURT: . . . I think it a fair statement for you to make after the 15th your organization was participating in the strike.

A. We were participating from October. We didn't participate in calling that strike. I don't know how we——

could by our injecting ourselves continue it or not to continue it.

(P. 213)

A. Our injecting ourselves (P. 214) in that respect, prolonging the strike, we could have cut it short if somebody had worked with us.

Q. I am not intimating it is favorable or unfavorable to your position but you were in touch with the situation after the strike began?

A. Yes, sir.

Q. Did you ever at any time encourage the men to return to work?

A. I wouldn't say we encouraged them to return or not to return. We advised them not to strike. I don't think we were in position to tell those people what to do at that stage and on midnight, the 14th, we were named in the restraining order. Things came so fast I felt we had to take some action. Told Mr. Wood to obey the restraining order.

Q. You must have been in it after the 14th or 15th because your men were there on this night when the restraining order was served and your men were telling the pickets that they must obey the order and that "we" your organization intended to fully comply with the Judge's order.

A. Even before then I am sure Mr. Wood told those men to conduct themselves properly. I am sure they were looking to us for advice. I don't know how we could have failed to be there from an honorable position.

(Page 216)

Q. Did you say you wanted the strike?

A. From the standpoint of having to go in there and being accused of being involved in it our being injected into it by the people wanting us to settle for them is what I meant when I used that term.

Q. You have seen these pictures and it was in evidence that Mr. Roberson got some signs and displayed them.

A. If I recollect properly Mr. Roberson had some signs in his car.

Q. Do these photographs correctly represent them?

A. Yes. I think they represent what was there. He had them in his car.

Q. You were present in Henderson in the NLRB hearing on March 3?

A. Yes, sir.

Q. And then the hearing before this Court that I have been referring to?

A. Yes, sir.

Q. At any of those hearings was any question of these cards ever (P. 217) brought up or were they ever mentioned?

A. I have stated to Mr. Sweet and I think inferred in all of these hearings that we had proof.

Q. Were those cards or any of them ever brought up or mentioned by District 50 or anybody else in the two hearings referred to?

A. I don't think so. I am not sure. I am sure we didn't introduce them as evidence. I think we referred to the fact we had them.

Q. Don't you know this afternoon is the first time they have ever been brought in court in any hearing?

A. Might be, but not the first time we tried to use them for the evidence they were intended for.

Q. This is the first time they were brought in court?

A. I believe so.

Q. Don't you know so?

A. I can't say I know.

Q. I hand you a paper called "Press Release", plaintiff's Exhibit 17, dated January 10. Is that in your handwriting?

A. Yes, sir.

Q. I hand you what is marked plaintiff's Exhibit 8, a letter addressed to Mr. Sweet. Did you sign that?

A. Yes, sir.

Q. And I hand you plaintiff's Exhibit 15 and ask you the same question, if you wrote and signed that?

A. I wrote it except some underscoring.

(P. 218)

Q. You signed it?

A. Yes, sir.

Q. I ask you if at the Henderson hearing you didn't under oath make this statement, "We contend we inherited the strike. We didn't call it. We did engage the question of recognition after it started in the hope of getting that settled"?

THE COURT: He has already said that.

. . . .

(Page 229)

LUCIAN LINCOLN WOOD, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MAUPIN:

Q. Did you get a copy of the injunction at the gate?

A. That was the following night that the restraining order was issued. Yes, I got a copy. I asked the sheriff if he had an extra copy. I obtained it and immediately went to Henderson and called Director Fohl, told him what I had, read him parts of it I believe. I asked him what should I do about it. He told me to go back up to the mine and to call those people together and read them what the order contained and tell them that we were going to have to obey that to the letter, we had no alternative. We were going to be responsible for three hundred or more men, we were going to protect our necks, you bet that.

Q. You say you were responsible. Why?

A. The restraining order.

(P. 230)

Q. As a result of that what did you do?

A. I went back to the mine. We took out our speaker system we had used at the ball park for a month or so previous to that. I called the men together and I read to them part of the order that spelled out things they could do and things they couldn't do.

Q. What were they?

A. I don't remember. I do remember this, that the order limited the number of pickets to six at each gate. It limited the distance that they could approach the gate to a hundred feet. I had the highway patrol mark off an estimated hundred feet.

Q. That was that night?

A. Yes, sir, and I don't know, there were about eight or nine items in it.

Q. Did you point out the hundred feet to the strikers?

A. Yes, sir. I wanted them to abide by it.

(P. 230)

Q. That was the night of the 14th?

A. Yes. The restraining order issued the night of the 14th.

(P. 231)

Q. What happened after that?

A. I got back to the mine about 11:45. After going to Henderson, making a call to Mr. Fohl, coming back up there and setting up the speaker it was perhaps 11:45. After I read the restraining order to the strikers I told them after midnight, which at the time was the expiration date or time of the Stone Workers contract, and with the restraining order that after midnight District 50 would enter into the picture.

(Page 232)

CROSS EXAMINATION OF MR. L. L. WOOD BY MR. T. P. GHOLSON:

Q. Mr, Wood, I believe it is in testimony that you received a call on the 9th?

A. Yes, sir, I did.

Q. And as a result of that you proceeded to Henderson and Tungsten.

A. Yes, on the second call when I was asked to come. I went on the request of Cordell Holloman.

Q. You went to Tungsten?

A. Yes, sir.

Q. You met Mr. Shuey?

A. No, met Mr. Shuey in Henderson.

Q. Did Mr. Shuey go to the scene with you?

A. Yes, I believe so.

(P. 233)

Q. And who else?

A. Mr. Roberson may have gone with us.

Q. You recall whether he did or not?

A. I am inclined to believe he did.

Q. Did you spend the night in Henderson?

A. No, sir. I lived in Raleigh. Spent the night in Raleigh.

Q. Did you go back out there the 10th?

A. Went back to Henderson on the 10th. I believe I testified, I am vague whether I was in the vicinity of the mine on the 10th or not. I know I was in Henderson on the 10th.

Q. At that time you did meet with other officials of District 50?

A. If you are referring to the representative and directors, yes.

Q. Anybody on that payroll?

A. Yes.

Q. Who were they?

A. Director Fohl, Representative Roberson and myself.

Q. Mr. Shuey there?

A. No, sir.

Q. And where did you meet them and under what circumstances?

A. I believe I met them I think at the American Cafe. We had lunch there.

Q. On that day who else did you meet with at the cafe?

A. Cordell Holloman and I believe Jimmie Knight may have been present. I am not sure if there were others or not but I don't believe there were.

(P. 234)

Q. At that time there had been drawn up a notice to be published in the newspaper and broadcast?

A. A socalled press release was drawn up there. We were requested, or had been requested, by the pickets or strikers out there for us to take an active part and go in and see if we could get Cordell Holloman and Jimmie Knight put back on the job. We had advised the ones we talked to that we could not, that we had to keep hands off. The press release was issued for the benefit of other people to show them or tell them we could take no part in the thing, that we had no way and couldn't have until after January 15 of being in any position, had the company wanted to, to recognize us as the agent to go in and take over any grievance or anything else for these people.

Q. Couldn't have used the NLR Board?

A. No, sir. You know we couldn't.

Q. Could there have been de-certification?

A. Yes, sir. CIO, Stone Workers or the company could have.

Q. You couldn't?

A. No, sir.

Q. You didn't use that facility?

A. We have chosen not to.

Q. You were present when this was drawn up were you not, identified at exhibit "P-17"?

A. Yes, I was present when it was drawn up.

Q. And assisted in it?

A. No, sir.

(P. 235)

Q. You acquiesced in it?

A. If you will tell me what that means.

Q. Did you agree or disagree?

A. This was written by my superior and if he said it was right it was right with me.

Q. Were you consulted about it?

A. No, sir.

Q. You were just present?

A. Yes.

Q. In using the word "strike", that word is in there isn't it?

A. Yes, it's in there.

Q. You said that you didn't use the word "strike" except as an inducement like lawyers might threaten to sue.

THE COURT: There is no point in going over that.

Q. Did you know that Mr. Roberson had signs that were later exhibited using the word "strike"?

A. As representatives for the mine workers we cover large areas and carry on campaigns in many different areas and we at all times, I know it is a general practice, I have done it and every representative with the organization just about, if they have had a strike carry those things in the car.

Q. Did you have some?

A. I probably did.

Q. When you went out to the mine you had these?

A. Yes, sir. Had been used in other campaigns. Mr. Robertson (P. 236) had some and I had some.

Q. You know when Mr. Roberson delivered these to the strikers?

A. I don't know but I believe sometime on the 15th.

Q. Do you know to whom he delivered them?

A. No, sir, I don't

Q. Won't you present?

A. Mr. Gholson, I am not sure I was there when Mr. Robertson gave out the signs or not. If I was I would say so.

Q. You are the one that knows better than anybody else. Were you?

A. I am not sure.

Q. How do you know he gave them out?

A. They were signs Mr. Roberson had. I didn't give out any so Mr. Robertson must have.

Q. Do you know who took this press release to the paper?

A. No, sir, I don't.

Q. Know who paid for it?

A. I am assuming it wasn't paid for. I have never issued a press release. I don't know if you have to pay for them or if it is a matter of news.

Q. How long after the 15th was it before headquarters was set up for the strikers?

A. It was possibly within a matter of a week after the restraining order limited the number of pickets to six and we realized if these people ganged up at the mine in numbers more than six that District 50 was going to be held responsible. Representative Robertson and I (P. 237) started looking

around for a place far enough away from the mine that we would be within the outline of that restraining order, within the bounds of it I should say, for these people to get information if they wanted to, or accumulate or change shifts or whatever they wanted to. We got the place to protect ourselves.

Q. You say you advised the men to resort to no violence?

A. Always.

Q. Did you advise them to go back to work?

A. We advised them on several occasions to—

Q, Answer the question yes or no.

A. It is pretty cut and dried if I answer yes or no. We told the people to begin with to air their grievances through grievance procedure under Stone Workers contract and if they had done that there would have been no strike.

Q. Did you thereafter advise them to return to work?

A. I don't think we were in position to advise them one way or the other.

Q. You were advising them.

A. No, we were not advising. The men conducted the strike themselves. We obtained a building and we gave them some signs after the 15th but we didn't encourage them to stay out or go back

Q. On your loud speaker the night of the 14th, you had received notice at eight o'clock, came back to Henderson, sixteen or seventeen miles, went back, set up the loud speaker system, and about eleven-forty-five you made a broadcast?

(P. 238)

A. Yes, sir.

Q. And on the 15th you told them you would enter the picture?

A. I believe I said that.

THE COURT: There is no question but what there was a strike going on.

A. I think we are all aware that there was a strike going on.

Q. I assume it was not initiated or authorized by District 50, as both you and Mr. Fohl said. We will assume that for the time being and we will assume as you both said you not only didn't initiate or authorize or suggest the calling of a strike but as a matter of fact advised against it and said it was not the thing to do. Is it not a fair statement that beginning January 15, on which date this contract was supposed to expire, is it not a fair statement that after that date. District 50 did engage in a strike?

A. Well, I will say after the restraining order issued by the Superior Court we were brought into it then and I don't see how we could have stayed out of the thing with that. I think we would have put ourselves liable for failing to adhere to the restraining order.

Q. Is it not a true statement that District 50 did engage in that strike?

A. Yes, sir. There were District 50 signs out there if that infers that District 50 was in it. We were there. We were in the vicinity. I suppost we would say District 50 was a (P. 239) part of it.

THE COURT: That is a fair statement without regard to whether it constitutes something that makes you liable for damages.

A. I don't see how we could have been anything other after the 15th in view of the restraining order. I don't see how we could hold ourselves apart from it when we had been made a party in going to the court to get

the restraining order. If it had been against the strikers and no mention of District 50 it is possible we wouldn't have been in the picture.

Q. You were afraid to go home and leave the men to themselves because you were afraid you would be held responsible in any event?

A. I go home every night.

Q. But you kept in touch?

A. Yes, sir. We were on the scene. We had worked with these people ninety or a hundred days prior to this walkout. We were still holding organizational meetings and we had some obligation to these people. Not in conducting or taking part in the strike but application they had taken on these cards.

(Page 262)

WILLIAM CORDELL HOLLOMAN, being duly sworn, testified as follows:

CROSS EXAMINATIION BY MR. FULLER:

Q. Did you or anybody in Branch 98 ever petition for de-certification of that union as bargaining union at Tungsten?

A. None other than the letters we sent I wouldn't think.

Q. You knew you had the right for de-certification?

A. I was not familiar with that at all.

Q. You signed this letter of November 13 referring to rules and regulations covering that. Didn't you know what you were signing when you signed the letter?

A. I knew the purpose of the letter.

Q. Who wrote the letter?

(P. 263)

A. Mr. Wood prepared the letter for us the day before we signed it.

Q. 12 of November, 1952?

A. I don't know the date.

Q. The letter is dated November 13. Where was it written?

A. I don't know where it was written.

Q. You were not there when it was written?

A. No, sir.

Q. Who brought it to you to sign?

A. Pendley.

Q. Who brought it to Pendley?

A. I don't know.

Q. I believe you testified in the hearing here in January, 1953, the 29, in the District Court, "Re Johnston and others against Tungsten Mining Corporation, and so forth"?

A. Yes, sir.

Q. I read some of your evidence and see what you said at that time.

OBJECTION BY DEFENDANT OVERRULED.

You were questioned to this effect:

"Q. Did you file grievance with the union at that time?

A. No.

Q. You knew the existing contract required a grievance procedure?

A. That is true, but didn't have time.

Q. You say you didn't have time to file grievance?

(P. 264)

A. Yes."

You testified to that?

(No answer).

Q. Do you have any difficulty in hearing me?

A. I don't have any difficulty at all.

"Q. Did you file grievance with the union at that time?

A. No.

Q. You knew the existing contract required grievance procedure?

A. That is true, but didn't have time.

Q. You say you didn't have time to file grievance?

A. Yes."

Is that what you were asked and what you said?

(No answer).

Q. Would you like to see this?

A. Yes. (The witness looks at the transcript). That's right.

Q. You were talking about the occurrence on January 9, 1953?

A. Yes, sir.

Q. "Q. You mean you immediately talked to fellow members of the group and planned a strike?

A. I talked to fellow members of the group and they planned the strike.

Q. You were with them when they planned?

A. Yes, sir.

Q. You had meetings with them for the purpose of organizing new union?

(P. 265)

A. Yes, sir."

Q. Is that right? Are they the questions asked you and are they the answers you gave?

A. I suppose they are.

Q. That's what it says?

A. Yes.

Q. You don't deny them?

A. I don't deny them.

Q. "Q. You and these others went to the plant and talked to the workers as they left the shift at four o'clock on January 9?

A. Yes, sir.

Q. Told them what happened?

A. Yes, sir.

Q. And you asked them not to go back to work?

A. Told them what had happened. They didn't want to go back to work anyway. We didn't advise them what to do.

Q. You didn't suggest to them a picket line?

A. They could see that.

Q. You mean you established a picket line with the other members of the group?

A. Yes, sir.

Q. You have picket signs that say "On Strike"?

A. Yes, sir."

Q. Down to where I stopped reading is that correct?

A. Yes, sir.

(P. 266)

Q. Then you were asked:

"Q. The same day did you get in touch with District 50 representatives?

A. That is true.

Q. Tell them what had happened?

A. Yes.

Q. They sent a representative down to see you immediately?

A. Yes.

Q. That was Mr. Robertson?

A. No, sir, representative of District 50.

Q. You say his name was Robinson?

A. There were two, Robertson and Wood."

Is that correct down to there?

A. Yes, sir.

Q. "Q. That was on January 9 or 10?

A. Evening of January 9 I believe.

Q. You told them what had happened?

A. Yes, sir.

Q. What did they say?

A. I don't remember exactly. They didn't say anything direct. That they wanted to walk out.

Q. Did they say they would spread the strike?

A. They said they would give us some assistance after the 15th probably.

Q. So until the 15th they were present at the picket line?

(P. 267)

A. Occasionally."

Q. Is that right?

A. Yes, sir.

Q. The "they" referred to were Robertson and Wood?

A. That's right.

Q. "Q. How were you going to do the picketing?

A. We mor or less organized it after we started it."

Then you say Mr. Robertson didn't help you organize the pickets and you didn't think Mr. Wood helped you and they didn't tell you to arrange who would carry the signs.

"Q. You were present when they gave instructions to the pickets on January 14?

A. I was present, yes, sir."

And at the bottom of page 135 of the transcript, "No question in your mind but what you went on strike January 9?", and you answered, "No question", and you stated that you aided in the picketing?

A. Yes, sir.

Q. You have heard the press release referred to. Did you go to the newspaper office and radio station to give that in and to have it broadcast?

A. I don't recall whether I went or not.

Q. Don't you recall going to one or the other or both with Mr. Robertson?

A. No, sir.

(P. 268)

Q. Or Mr. Wood?

A. No, sir.

Q. You don't recall it but you don't deny it?

A. No, sir.

THE COURT: Did you sign the press release?

A. Yes, sir.

Q. What did you do with it after it was signed?

A. We were all eating lunch together. I don't know.

Q. You don't remember taking it to the paper?

A. No, sir.

BY MR. FULLER:

Q. Didn't you take it to the radio station and have it copied there or didn't somebody at the radio station copy it and then you took it to the newspaper, the Henderson Dispatch?

A. I don't recall. I don't deny it but I don't remember it.

Q. You did testify in Henderson at the LRB hearing?

A. Yes, sir.

Q. When Mr. Dyer questioned you about this press release he said, "All right, Mr. Holloman, that press release was taken by Mr. Roberson and you went to see the local radio announcer first" and you answered "Yes".

Q. "Q. And you told him about it and gave it to him and you made a copy of it?" to which your answer is "Yes, sir".

A. What was that?

(P. 269)

Q. Still on the same question of the press release, this is the next question after the one I read awhile ago: "Q. And you told him about it and gave it to him and you made a copy of it?", to which you answered "Yes, sir".

A. I don't recall that but it could be true.

Q. "Q. And this was later announced over the air. Did you later hear the announcement?" "A. We heard it announced."

A. Yes, sir.

Q. "Q. Thereafter you went to the editor of the Henderson Daily Dispatch and gave him that press release, didn't you?" "Yes, sir".

A. It could be.

Q. "Q. Along with Mr. Robertson?" Answer: "Yes, sir." Is that right?

A. Yes, sir.

Q. On Page 131 of the hearing in the District Court go to the top of the page: "Q. During the course of those transactions in the fall of 1950 didn't they say that District 50 didn't use the procedure of the United Relation Board?" "Didn't they also say that when they wanted something the way they got it was by striking"? and you said, "I believe so." Is that correct?

A. That's what it says here.

Q. What did you say at that hearing when under oath?

A. I don't remember saying it but I guess I did.

Q. You don't deny it?

A. No, sir.

(P. 270)

Q. "Q. Did they not also say that sometime after a company refused to recognize and bargain with them, did they not say at the termination of the existing contract they were going to call a strike?" And you said, "What was the first of the question?", and it was repeated, "Sometime after October 13 didn't they tell your group at the meeting that at the termination of the existing contract on January 15, 1953 they were going to call a strike?". There was an objection which was overruled and you answered "I believe so". Is that right?

A. There were also a lot of other things I said at the meeting.

Q. I just asked you about that.

A. Yes, sir.

THE COURT: In your examination today you said you were told that after January 15 they would give you some help.

A. Yes, sir, that's right.

. . . .

(P. 284)

J. B. FOREMAN, being duly sworn, testified as follows:

CROSS EXAMINATION OF MR. FOREMAN BY MR. GHOLSON:

Q. You say you went to Henderson on October 19, 1952?

A. No, I went to Henderson on October 1, 1952.

Q. At that time and prior to that time you knew Stone Workers Union was duly certified bargaining agent for workers at Tungsten mine?

A. Yes.

Q. You knew on December 18, 1952 that Stone Workers Union was duly certified bargaining agent for Tungsten mine?

A. I knew certification was standing all right.

Q. And certification was standing all right on January 15, 1953?

A. So far as we were concerned, yes, sir.

Q. And you knew there had been no de-certification?

A. That's right.

Q. And the certification that had been made by the NLRB was still standing on those dates?

Q. Mr. Foreman, you were appointed administrator on what date?

A. I believe I can give you the date in just a minute. November 13 I taken over as administrator.

(P. 285)

Q. Your apppointment as administrator was strictly under the constitution and regulations of Stone Workers Union?

A. Yes.

Q. Perfectly proper?

A. Yes.

Q. And you had full authority?

A. Yes.

Q. Your actions as administrator were binding on the union. Is that correct?

A. That is correct.

Q. And you did handle the work of the union, or the contacts of the union with Tungsten Mining Corporation?

A. Yes, sir.

Q. You had a committee you consulted with of the local union?

A. Yes, I did.

Q. When was your employment with Stone Workers terminated?

A. In April, 1954?

Q. And you haven't been connected with them since that time?

A. No, I have not.

Q. Where do you live at the present time?

A. Martinsburg, West Virginia.

Q. Been there since April, 1954?

A. Yes, sir.

Q. What is your employment?

A. Carpenter.

(P. 286)

Q. Been in that employment since April, 1954?

A. The first year I didn't do anything. Did some work on my home.

Q. When were you first contacted, or you contact anybody else, or you were approached, or you approached anybody else about being a witness in this case?

A. Last week. Several days when I would go home my wife would tell me somebody by the name of "Mr. Green" had been calling me from North Carolina. I told her I didn't know any Mr. Green and they would have to call when I was home. I believe it was Saturday evening the call came in. That would be the third or fourth call that came in, and I was home. Mr. Green called me.

Q. You hadn't talked with anybody connected with United Mine Workers District 50 prior to that time?

A. No.

Q. You had a talk with Mr. Green and you came to North Carolina for what purpose?

A. Mr. Green asked me to come down.

Q. And you did come down?

A. Yes.

Q. When?

A. I came down Monday.

Q. Did you bring the records you have there that you have with you at that time?

A. Yes, I did.

Q. I ask you when you left the employment of Stone Workers Union (P. 287) why you didn't leave them in the office at Winston-Salem?

A. That was not considered our office.

Q. What was considered the office?

A. International office in the State of Vermont.

Q. Why didn't you leave them in the State of Vermont?

A. Nobody asked for them. My employment ended in West Virginia.

Q. In 1954?

A. Yes, sir.

Q. Where did you receive the records you have there?

A. From here and there.

Q. What do you mean?

A. I was a fellow that didn't stay much in one place. When this situation was going on I was handling situations in Baltimore, Buckinston, Camden, Winston-Salem and here.

Q. Do you have the envelope?

A. Yes, this is the envelope they came in.

Q. You received those at Henderson?

A. Yes, sir.

Q. Kept them with you at the time your employment with Stone Workers was terminated you didn't give any information that you had—

A. Not many records left. Mr. Scott had the records.

Q. You received the contents of that envelope about January 21 or 22, 1953.

A. Whichever is stated on there.

Q. Until that time you received nothing in writing about any (P. 288) resignation of any employees of Tungsten mine until you received that letter January 21 or 22nd?

A. I hadn't received letters from them.

Q. That was the first writing you had?

A. Yes, sir.

Q. When you went to Tungsten mine in October, 1952 you knew the checkoff records of Tungsten Mining Corporation disclosed that a majority of the employees were checkoff of Stone Workers Union?

A. I don't know.

Q. You know what the checkoff dues were?

A. I believe $2.00 per capita, $1.25 to the International.

Q. That $2.00 deducted by Tungsten mines and paid to the local union around the first to tenth of each month for the prior month wasn't it?

A. I believe around the first week of each month.

Q. A list of the employees was given with the checks?

A. That's right.

Q. Did you receive a check January 9, 1953 as administrator for checkoff for December, 1952?

A. I received this check, yes, sir.

Q. What is the amount?

A. $498.00.

Q. And a list of the employees from whom this has been deducted and paid as dues was attached thereto.

A. I think so.

(P. 289)

Q. So that would disclose if you divide it by two that 249 employees had checkoff authorization with the company?

A. That's right.

Q. During the month of December, 1952?

A. Yes.

Q. Now, Mr. Foreman, as administrator you had authority to negotiate a contract with Tungsten mine didn't you?

A. Yes.

Q. On November 14, 1952 you gave them notice you desired to negotiate a new contract?

A. Yes.

Q. And you did negotiate a new contract?

A. Yes.

Q. It has been denied by witnesses for the plaintiff that the negotiating occurred in New York but assuming that they were negotiated in New York was there anything improper about that?

A. No, so far as I was concerned. I was administrator and felt that I had the right.

Q. Before signed it was negotiated with the workers union at Tungsten?

A. Yes.

Q. You approved of it and you entered into the contract for Stone Workers Union?

A. Yes, sir.

Q. And Mr. Long and Mrs. Sweet signed for the company?

(P. 290)

A. I believe they did.

Q. And there were certain changes made in the contract from the previous contract which included wage increase?

A. Yes, sir.

Q. 12½c across the board?

A. Yes, sir.

Q. You entered into that contract because you knew and felt as administrator you were entering into a fair contract for employees of Tungsten mine?

A. Yes.

Q. That contract went into effect January 15, 1953 and continued for a period agreed on in the contract?

A. Yes.

Q. There has been some suggestion made, I don't know why but it was, that on one or two occasions you visited in the home of Mr. Sweet.

A. That's right.

Q. Was there anything improper about that?

A. I don't think so.

Q. And nothing improper discussed or done while you were a guest at his home?

A. I don't think so.

Q. You didn't consider it was?

A. No:

Q. And no negotiations were carried on there in secret between (P. 291) you and Mr. Sweet?

A. No, I don't think any secret discussion.

Q. Now you mentioned that the company placed an advertisement in the Henderson Daily Dispateh. I ask you if the company didn't state in that advertisement that they would bargain with any union duly certified by the National Labor Relations Board?

A. I think that's right.

Q. And when you came back from Camden, Tennessee Mr. Green asked you if you had authority to process grievances with or without a committee and you said yes. That was right?

A. Yes, sir.

Q. That authority was proper under the constitution?

A. It was.

Q. No grievances were filed with you were there?

A. I don't believe there were.

(P. 292)

JETER MURDOCK, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GHOLSON:

Q. Where do you live?

A. Henderson.

Q. Your occupation?

A. Shift boss now.

Q. Where?

A. Tungsten Mining Corporation.

Q. On January 9, 1953?

A. Assistant mine foreman.

Q. On that date will you relate an incident that has been testified occurred between you and Mr. Cordell Holloman and Mr. J. W. Knight?

A. On that day Jack Townsend was working under me. I got to the job about eleven-thirty and told Jack to let's go up in the stopes where these boys were working. It was about a five minutes walk (P. 293) from the shaft to this working place. We got up to this working place about twenty-five minutes to twelve o'clock and Mr. Holloman and Mr. Jimmie Knight were eating lunch. I looked at my watch and asked Jack what time it was. He said it was twenty-five minutes to twelve. That was the time I had. Neither of us said anything to the boys. We went up in the stope, lined the work in the stope. I said, "Jack, have you warned these boys about eating dinner early?" He said, "Yes, I sure have, two or three times before". I said, "What you going to do about it?"

MR. ARENDELL: Were either Mr. Holloman or Mr. Knight present at that conversation?

A. No, sir. We were up on the stope and they were down on the track.

OBJECTION BY DEFENDANT OVERRULED.

Jack said, "Only one thing to do". They had been warned before. He said, "I will have to let them go". I didn't tell him to let them go or not. That was up to him. We came down and I went to the top of the ground to the shaft where I eat dinner.

Q. Did you see them afterward?

A. No, sir.

Q. Did you at this time know that Cordell Holloman was the purported president of some organization or union there?

A. No, sir, I sure didn't.

Q. Had you prior to this time ever eaten with Cordell Holloman or Jimmie Knight except at the regular hour, twelve to twelve-thirty?

(P. 294)

A. No, sir. I eat on the surface and they eat underground.

JACK TOWNSEND, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GHOLSON:

(P. 300)

Q. State your name.

A. Jack Townsend.

Q. Where do you live?

A. Henderson.

Q. Your occupation?

A. Assistant mine foreman.

Q. How long you been working for Tungsten mine?

A. Little over eight years.

Q. On January 9, 1953 what was your occupation?

A. Shaft boss.

Q. And was there working under you Cordell Holloman and Jimmie Knight on January 9, 1953?

A. Yes, sir.

Q. Relate to the Court what incident took place on that day between yourself and those two men.

A. Jeter Murdock came down the shaft to the 500 level at 11:30 and (P. 301) he and I walked back to this stope where these fellows were working. About five minutes walk. These two fellows sitting on the track eating lunch. We went on up in the stope. Jeter said, "Those fellows eating early. Have they been warned?" I said, "Yes, they have".

Q. Had they been warned?

A. Yes, sir.

Q. You had warned them yourself?

A. Yes, sir, on the 7 of January and on the 8 of January. Nelson Pike told me he had warned them. He was shaft boss at the other end of the mine. We went on in the stope and Jeter said, "What you going to do?" I said, "Not but one thing to do." I went and told the boys that was all. They would just have to get their time. So I took them out to the surface.

Q. Had you at any time prior to this time ever eaten at any time except the proper time with either one?

A. I won't say about the proper eating time but never had eaten with those fellows.

Q. Had you ever eaten with them except from twelve to twelve-thirty?

A. No, sir.

Q. Did you know January 9, 1953 that Cordell Holloman was president of some union or held some office therein?

A. No, sir, I didn't.

THE COURT: Had you heard it?

(P. 302)

A. No, sir, I hadn't heard it.

W. L. LONG, recalled, testified as follows:

RE-DIRECT EXAMINATION:

(P. 308)

Q. This morning you heard Mr. Foreman testify about the membershipp in Stone Workers who had gone over and signed cards in District 50. Did he tell you anything like that?

A. No, sir. On the contrary Mr. Foreman told me in his opinion there were not over twenty-five or thirty at most disgruntled members causing all this trouble. At that time we had in our files (P. 309) the checkoff statements saying they were members of CIO union, Stone Workers Union. We discussed that. I saw Mr. Foreman a number of times from the period he came there and was made administrator until after he negotiated this contract. All during the strike I saw a great deal of him. We were constantly conferring together. I never had any suggestion or statement from anybody except indirectly from Mr. Fohl through Mr. Sweet that a majority of our people had signed cards with this union until on the 21 or 22 of January there came through the mail a letter from Mr. Cordell Holloman enclosing in that letter 269 checkoff withdrawals, but until we received that thing after the strike was virtually ended, a week after injunction signed by Judge Williams and reign of terror ended this information was sent to us through the mail. At that time all our checkoff certificates had been cancelled and new ones being substituted. Mr. Foreman never told me any such thing.

THE COURT: You still got a contract with Stone Workers?

A. Yes, sir.

Q. How many members you got?

A. About eighty percent of our membership and that is some over 400. We have 550 members eligible and I think the membership something over 400. Ran seventy-five to eighty percent in the union and twenty to twenty-five percent not in the union.

Q. When did you negotiate to sign the last contract?

A. We signed the last contract, it ran out on January 15, 1956. We had just signed prior to its expiration new two year (P. 310) contract which will expire January 15, 1958.

THE COURT: With whom did you negotiate in that instance?

A. Mr. Scott and the committee of the union.

Q. Who are they?

A. President Daniel Hayes, a Mr. Hughes, a man named Harris. Quite a large membership this year. The committee was not on these discussions. I would like to say I went home last night and looked up my diary. I keep one every day and went back to see what I did December 17 and 18 last year and in my diary it shows I went to the mine on the 17, spent the entire day there in negotiations with Foreman, Swan and Martin, and Mr. Bailey on our side, and I stayed there until half past six. Got home late for supper. Didn't reach an agreement. Went the next day and spent the entire day and did reach an agreement. Got home at seven o'clock.

EXHIBITS

PLAINTIFF'S EXHIBIT 14

DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Address Reply to:
Region 19, District 50, U. M. W. A.
311 Grace Street
Richmond, Virginia
Telephone: 7-7592

900 15th Street, Northwest
Washington 5, D. C.
October 30, 1956

National Labor Relations Board
Washington, D. C.

Attention: All Board Members

Gentlemen:

For your information, the United Mine Worekrs of America have as members a very substantial majority of the Production and Maintenance Workers of the Tungsten Mining Corporation, Tungsten, North Carolina. A contract has been in effect with this Company thru the C. I. O. United Stone and Allied Products Workers of America for a number of years and this contract expires around January 15, 1953. We have given this Company due notice that the United Mine Workers of America now represent these employees, by letter dated October 17, 1952, and by personal visit of representatives of this Organization with the General Manager and Vice President, Mr. J. R. Sweet.

I am attaching copies of correspondence between this Organization and Mr. Sweet. I am also attaching notices which he has posted in the Plant since our first efforts to advise him of the Union his employees desire.

As you can see from these notices, Mr. Sweet is trying to imply to his workers that they can only be certified thru the National Labor Relations Board and that by some strange method of thinking, his Company has no right to recognize a Union unless this procedure is followed and no legal right under the circumstances to refuse to recognize any union until the issue is settled.

We are merely advising your Board of this situation as a matter of record because this Organization intends to fully support and protect the interests and desires of the workers of this Mining Company, by every moral and legal means at our disposal, including that of strike action, if necessary.

Very truly yours,

/s/ Robert R. Fohl
Robert R. Fohl
Director Region 19

cc: National Labor Relations Board, Winston-Salem, N. C.
National Labor Relations Board, Baltimore, Maryland
Forrest H. Shuford, Commissioner, Dept. of Labor
Walter H. Shuey, Representative, Dist. 50, UMWA
A. D. Lewis, Chairman, Organizing Committee, Dist. 50
J. R. Sweet, Vice President and General Manager

Enclosure (5)

RRF:GD

PLAINTIFF'S EXHIBIT 17

Jan. 10, 1953

PRESS RELEASE:

The Tungsten Mine is on strike due to the spontaneous walk out of all workers because of the discharge of the President and Recording Secretary of the new local union of the United Mine Workers of America.

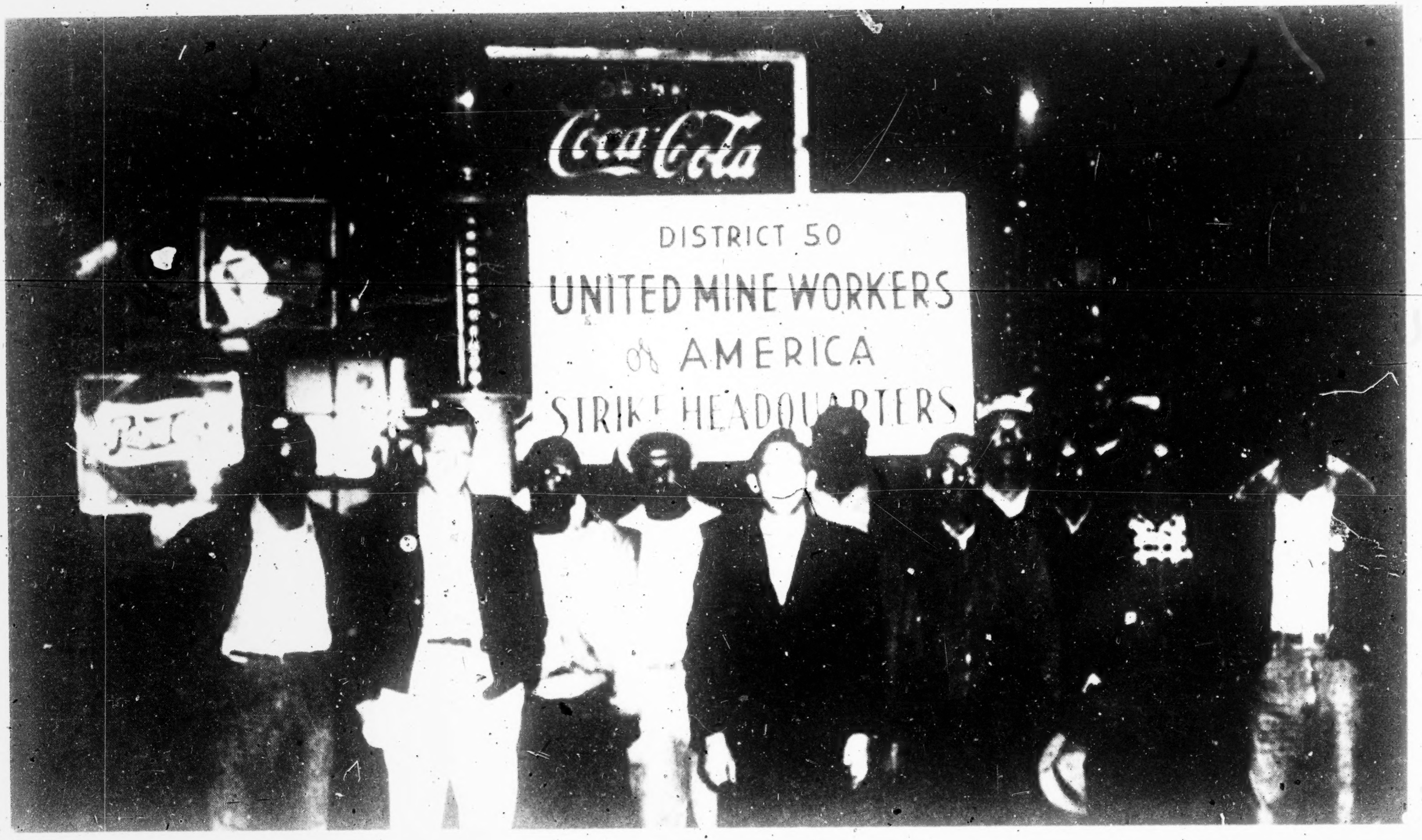
These two officers were fired for an alleged practice which has been an accepted custom by the workers and the Company.

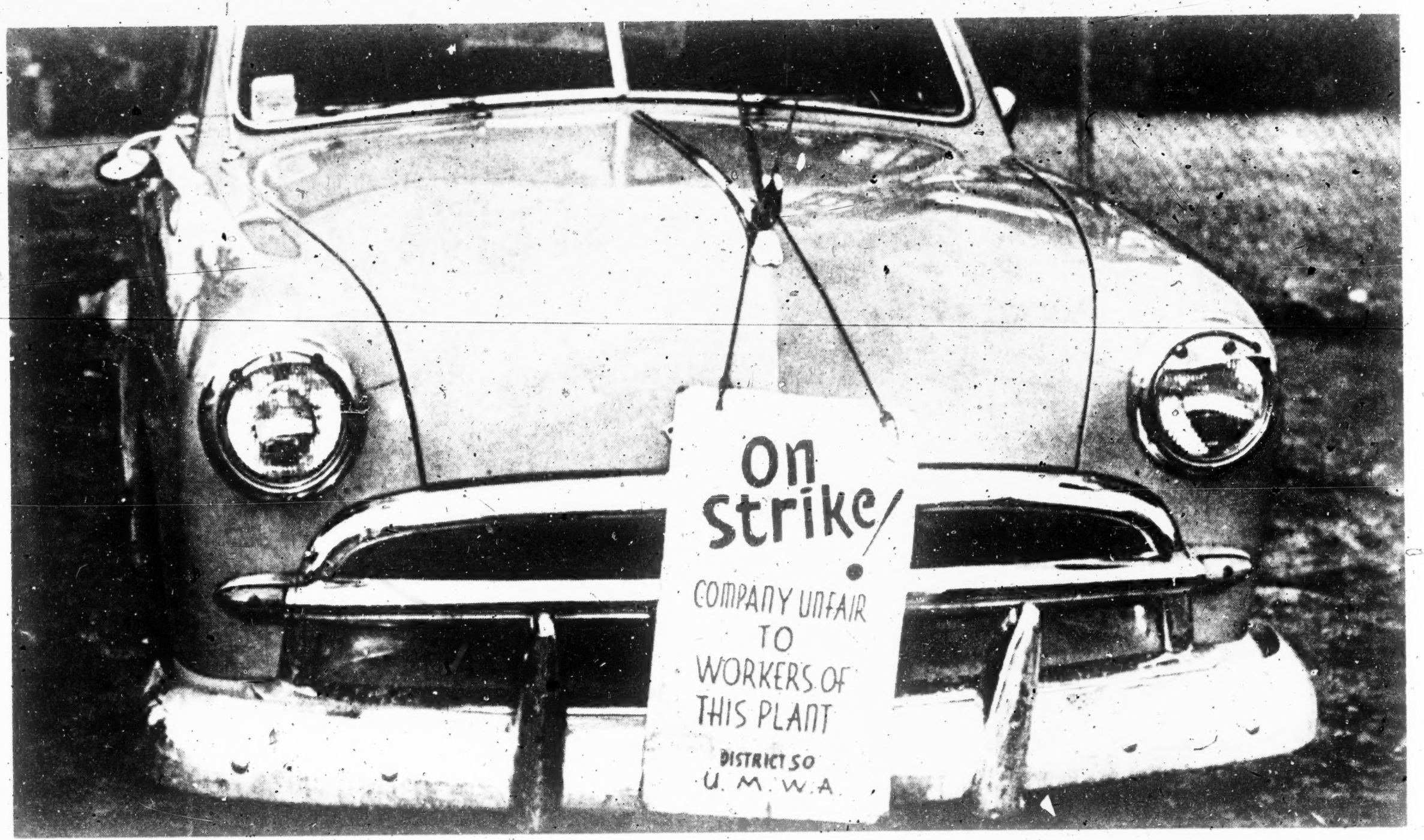
The prime reason for these discriminatory discharges was action within the past two or three months by Local 98 of the CIO Stone and Quarry Workers local to disaffiliate and write a new contract under the United Mine Workers of America. The workers officially voted and informed the Company not to sign, amend or extend any contract with the CIO. Despite this official action and notice by a substantial majority of the workers the Company and the CIO have attempted to work out an illegal back-door two year agreement under an administrator set-up against the wishes of the workers.

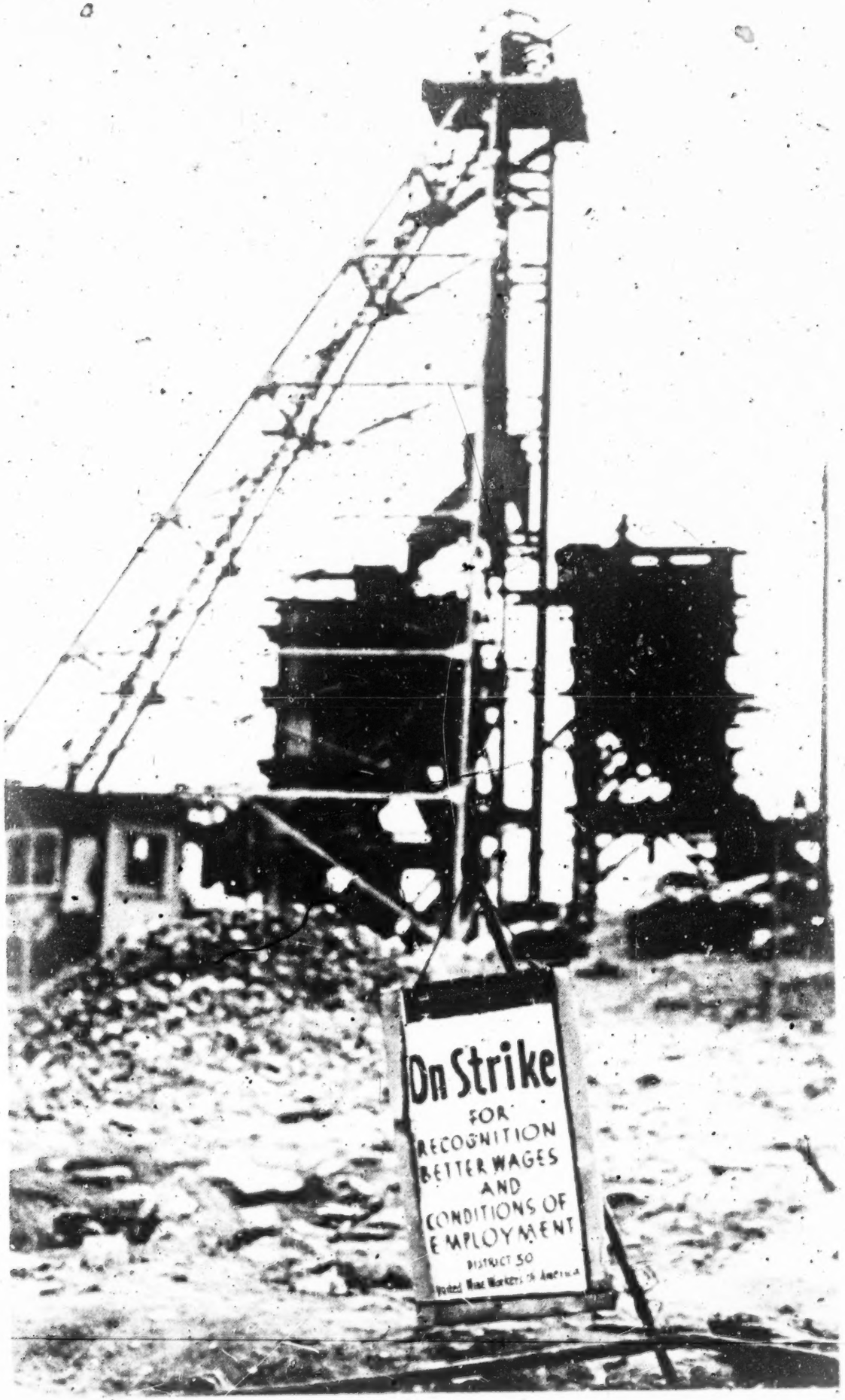
In addition to a strike for the two discharged workers, it will also be a strike for recognition of the United Mine Workers of America and a new contract with proper wages, hours and working conditions from January 15, 1953 on.

Cordell Holloman

President Tungsten Local Union
United Mine Workers of America


Coca-Cola
DISTRICT 50
UNITED MINE WORKERS
of AMERICA


On
Strike!
COMPANY UNFAIR
TO
WORKERS OF
THIS PLANT
DISTRICT 50
U. M. W. A.


On Strike
FOR
RECOGNITION
BETTER WAGES
AND
CONDITIONS OF
EMPLOYMENT
DISTRICT 50

On Strike
FOR
RECOGNITION
BETTER WAGES
AND
CONDITIONS OF
EMPLOYMENT
On Strike
FOR
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On
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COMPANY UNFAIR
TO
WORKERS OF
THIS PLANT
DISTRICT 50
U. M. W. A.

No. [redacted]

Office - Supreme Court, U.S.
FILED
JUN 19 1957
JOHN T. FEY, Clerk

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 7293

TUNGSTEN MINING CORPORATION

Plaintiff Appellant

vs.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Defendant Appellee

YELVERTON COWHERD, *Attorney*
500 15th Street, N. W., Washington 5, D. C.

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ATTORNEYS FOR DEFENDANT APPELLEE

FILED
OCT 24 1956

COMMERCIAL PRINTING COMPANY, RALEIGH, N. C.

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 7293

TUNGSTEN MINING CORPORATION

Plaintiff Appellant

vs.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Defendant Appellee